

PART I

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Rules and Regulations

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 1]

PART 729—PEANUTS

Subpart—Allotment and Marketing Quota Regulations for Peanuts of the 1963 and Subsequent Crops

1. *Basis and purpose.* (a) The amendment contained herein is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), to revise the Allotment and Marketing Quota Regulations for Peanuts of the 1963 and Subsequent Crops (27 F.R. 11920). The amendment among other things, (1) removes the provisions for a tillable acreage factor and its use, (2) provides that history acreage will be cancelled for a new farm if the allotment established for the farm is cancelled, (3) adds to the conditions under which allotment acreages cannot be released to the county committee, (4) provides that if the entire acreage allotment for a farm is permanently released, the farm shall not be eligible for a new farm peanut acreage allotment if the farm was credited with peanut history acreage in the base period used in the determination of the current year acreage allotment, (5) eliminates provisions under which seed shellers require identification of peanuts shelled for producers for seed, (6) includes the basic penalty rate for the 1963 crop of peanuts, and (7) allows credit for penalties paid on marketings when penalties for failure to account or false identification are computed.

(b) Public notice of intention to issue this amendment was given (28 F.R. 10335) in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 1001-1011) and due consideration has been given to recommendations received in response to such notice. The marketing of peanuts from the 1963 crop is now underway, history acreage credits are being determined for use in establishing 1964 allotment base acreages, and it is essential that the basic penalty rate for the 1963 crop be announced immediately. Accordingly, it is hereby determined and found that compliance with the 30-day effective date provision of the Administrative Procedure Act is impractical and contrary to the public interest and this amendment shall become effective upon the date of filing with the Director, Office of the Federal Register.

2. The Allotment and Marketing Quota Regulations for Peanuts of the 1963 and Subsequent Crops (27 F.R. 11920) are hereby amended as follows:

a. Paragraphs (d), (e), (r), (s), and (v) of § 729.1412 are amended to read as follows:

§ 729.1412 Definitions.

(d) *Current year.* The calendar year for which acreage allotments are being established, or peanut history acreage and normal yields are being determined, or the farm is being considered under the provisions of the marketing quota program.

(e) *Director.* The Director or Acting Director of the Farmer Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(r) *New farm.* A farm for which a peanut allotment is established in the current year and for which there is no peanut history acreage in the base period under the provisions of § 729.1424.

(s) *Old farm.* A farm for which there is peanut history acreage under the provisions of § 729.1424 in one or more years of the base period.

(v) *Quota peanuts.* The actual production of peanuts on the effective farm allotment.

§ 729.1415 [Amendment]

b. The address of the Alabama ASCS State Office which appears in § 729.1415 is changed to "Room 714, 474 South Court Street, Montgomery, Alabama."

c. The address of the Louisiana ASCS State Office which appears in § 729.1415 is changed to "3737 Government Street, Alexandria, Louisiana."

§ 729.1423 [Deleted, reserved]

d. Section 729.1423 is deleted and the number reserved for future use.

e. Section 729.1424 (c) (2) is amended to read as follows:

§ 729.1424 Determination of farm peanut history acreage.

(2) The acreage diverted from the production of peanuts under the provisions of the Conservation Reserve Program, the Cropland Conversion Program or the Great Plains Program, determined pursuant to Part 719 of this chapter.

f. Paragraphs (c) and (d) of § 729.1425 are amended to read as follows:

§ 729.1425 Determination of allotment base.

(c) The county committee shall examine the preceding year farm allotment for each farm and may adjust any such allotment downward, on the basis of the factors used in making upward adjustments under paragraph (d) of this section, if it determines that such action is necessary to obtain an allotment base for the farm which is equitable when

compared with the allotment bases established for other similar old farms in the community. If a downward adjustment is made, the allotment base for the farm shall not be less than the average peanut final acreage for the farm for the base period.

(d) Within a limitation of 10 percent of the State allotment for the current year, the State committee may make acreage available to the county committees for making upward adjustments in farm allotment bases. The county committee shall examine the preceding year farm allotment for each farm and may adjust such allotment upward if it determines that such action is necessary to obtain an allotment base for the farm which is equitable when compared with the allotment bases established for other similar old farms in the community. Upward adjustments shall be made on the basis of the farm peanut history acreages for the base period; tillable acreage available; labor and equipment available for the production of peanuts; crop-rotation practices; and soil and other physical factors affecting the production of peanuts. The county committee may use the sum of the downward adjustments made in accordance with paragraph (c) of this section in addition to the acreage available under this paragraph for making upward adjustments. If an upward adjustment is made, the allotment base for the farm shall not exceed the tillable acreage available for the farm.

g. Paragraph (b) of § 729.1429 is amended to read as follows:

§ 729.1429 Limitations on new farm allotments.

(b) The farm allotment established for a new farm shall not exceed the tillable acreage available on the farm.

h. Section 729.1430 is amended to read as follows:

§ 729.1430 Reduction and cancellation of new farm allotments.

The allotment determined under the regulations of this subpart for a new farm shall be reduced to the acreage planted to peanuts on the farm when it is found that such acreage is less than 75 percent of the allotment. Any farm allotment established and any history acreage credit shall be void as of the date the new farm allotment was issued if the State committee determines that the applicant knowingly furnished false, incomplete or inaccurate information to obtain the allotment.

i. Paragraph (b) of § 729.1433 is amended to read as follows:

§ 729.1433 Additional acreage for new farms.

(b) The conditions prescribed in paragraphs (b) through (e) of § 729.1432 are met.

§ 729.1434 [Amendment]

j. Paragraph (c) of § 729.1434 is amended to change the date of the beginning of the normal planting season for Florida from February 15 to March 15, to strike the word "closing" from the words "State and closing date" which precede the list of States and dates, and to change the counties listed in zones I, II, and III in Texas to include the same counties as those listed in such zones in § 729.1435(b).

k. Paragraph (a) of § 729.1435 is amended by substituting the following language for the first three sentences thereof:

§ 729.1435 Release and reapportionment.

(a) *Release of acreage allotments.* Except as provided in this paragraph, any part of a farm allotment on which peanuts will not be produced and which the operator of the farm voluntarily surrenders in writing to the county committee shall be deducted from the allotment to such farm if such acreage is surrendered not later than the applicable closing date specified below. If any part of the farm allotment is permanently released (i.e. for the current year and all subsequent years), such release shall be in writing and signed by both the owner and operator of the farm. If the entire current year farm allotment is permanently released, the farm peanut history acreages and farm allotment for the current year and prior years shall not be considered in establishing an allotment for the farm for any subsequent year and the farm shall not be eligible for a new farm peanut allotment if such farm was credited with peanut history acreage in the base period used in the determination of the current year acreage allotment. Acreage allotments may not be released (1) from new farms, (2) from farms owned by the Federal Government or any agency thereof, if there is in effect a lease or operating agreement prohibiting the production of peanuts, (3) for the current year, if the owner of the farm notifies the county committee in writing, before acreage is released by the operator, that he objects to such a release, and (4) from the allotment pool if an application for transfer from the pool has been filed in accordance with Part 719 of this chapter.

1. The first sentence of paragraph (b) of § 729.1435 is amended to read as follows:

§ 729.1435 Release and reapportionment.

(b) *Reapportionment of released acreage allotment.* The acreage released under paragraph (a) of this section may be reapportioned by the county committee to other farms in the same county receiving allotments in amounts determined by the county committee to be fair and reasonable on the basis of tillable acreage available; labor and equipment available for the production of peanuts; crop rotation practices; and soil and other physical factors affecting the production of peanuts; except that any acreage allotment released from a

farm which is covered in whole or in part by a Conservation Reserve Contract or for which a Cropland Conversion Program Agreement is in effect or has been applied for, shall not be reapportioned to any other farm.

§ 729.1445 [Amendment]

§ 729.1446 [Amendment]

§ 729.1476 [Reserved]

m. Sections 729.1445(c), 729.1446(e) and 729.1476 are deleted and § 729.1476 reserved for future use.

§ 729.1450 [Amendment]

§ 729.1466 [Amendment]

n. The first sentences of §§ 729.1450 and 729.1466 are amended by striking out "(except a seed shelling card)."

o. Section 729.1454(a) is amended to read as follows:

§ 729.1454 Sales memoranda and their uses.

(a) Form MQ-70 Peanuts, "Sales Memorandum and Record of Peanuts Dried or Shelled for Producers," is used to record and report purchases and the drying or shelling of farmers stock peanuts as provided in §§ 729.1471, 729.1473, and 729.1475.

p. Paragraph (b) of § 729.1455 is amended to read as follows:

§ 729.1455 Determination of normal yields.

(b) *Farm.* The normal yield for a farm shall be determined by the county committee and shall be the average yield per acre of peanuts for the farm, adjusted for abnormal weather conditions, during the five calendar years immediately preceding the year in which the normal yield is determined. If for any such year, the data are not available or there is no actual yield, then the normal yield for the farm shall be appraised by the county committee, taking into consideration soil and other physical factors, abnormal weather conditions, the normal yield for the county, the yields for other farms in the locality which are similar with respect to soil and other physical factors affecting the production of peanuts, and the yield for the farm in years for which data are available. Farm normal yields determined under the provisions of this section shall be approved by a representative of the State committee.

§ 729.1457 [Amendment]

q. Section 729.1457 is amended by designating the present text as paragraph (a) and adding a new paragraph (b), to read as follows:

(b) The basic support price for peanuts for the marketing year beginning August 1, 1963 and ending July 31, 1964, is \$224.00 per ton or 11.2 cents per pound and, therefore, the basic penalty rate for the 1963 crop of peanuts is 8.4 cents per pound.

r. Section 729.1458(d) is amended to read as follows:

§ 729.1458 Amount of penalty due from farms with excess acreage.

(d) *Peanuts falsely identified or not accounted for.* If the disposition of peanuts produced on the farm is not accounted for to the satisfaction of the State committee or if any amount of peanuts produced on one farm is falsely identified by a representation that such peanuts were produced on another farm, a penalty for the farm shall be determined by multiplying the normal yield by the excess acreage by the basic penalty rate and subtracting therefrom penalty paid on marketings.

s. Section 729.1471(b) (2) is amended to read as follows:

§ 729.1471 Recording and reporting purchases of farmers stock peanuts

(b) * * *

(2) "Form MQ-70 Peanuts" (i) may be used by buyers to record and report purchases of farmers stock peanuts which are not inspected by the Inspection Service, (ii) shall be used to record and report purchases of farmers stock peanuts which are not identified by valid marketing cards, and (iii) shall be used to report to the ASCS State office the correction of errors.

t. Section 729.1475 is amended to read as follows:

§ 729.1475 Record of shelling.

Any person who shells peanuts for a producer shall maintain records of the shelling of each lot of peanuts showing the following information. Form MQ-70 Peanuts or the seed sheller's own form may be used for this purpose.

(a) The date the peanuts were shelled;

(b) The name and address of the producer for whom the peanuts were shelled;

(c) The name of the State and county wherein is located the farm on which the peanuts were produced;

(d) The quantity of peanuts, farmers stock basis, shelled for the producer, and

(e) If any quantity of shelled peanuts is retained by the sheller other than those covered in § 729.1464 and the quantity returned to the producer.

u. The first sentence of § 729.1479 is amended to read:

§ 729.1479 Examination of records and reports.

The Deputy Administrator, the Director, the State executive director or any person authorized by any one of such persons, and any auditor or agent of the Office of the Inspector General is authorized to examine any records pertinent to the peanut allotment and marketing quota program. * * *

NOTE: The record keeping and reporting requirements of these regulations have been approved by and subsequent reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Secs. 372, 373, 375, 52 Stat. 65, 66, as amended; secs. 358, 359, 55 Stat. 68, as amended; 90, as amended; secs. 106, 112, 371, 70 Stat. 191, 195, as amended; 206, as amended; sec. 378, 72 Stat. 995, as amended; sec. 101, 76 Stat. 606; 7 U.S.C. 1358, 1359, 1372.)

1373, 1375, 1377, 1378, 1824, 1836, 16 U.S.C. 590p(e))

Effective date: Date of filing with the Director, Office of the Federal Register.

Signed at Washington, D.C. on November 1, 1963.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 63-11732; Filed, Nov. 5, 1963; 8:47 a.m.]

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Sugar Determination 864.10, Amdt. 1]

PART 864—WAGES; SUGARCANE; LOUISIANA

Bonus Payment and Piecework Rates

Pursuant to the provisions of section 301(c) (1) of the Sugar Act of 1948, as amended (herein referred to as "act"), paragraph (a) (1) (iii) and (iv) of § 864.10 of Chapter VIII of Title 7 of the Code of Federal Regulations (28 F.R. 11257), published October 22, 1963, is amended to read as follows:

(iii) *Bonus payment for work performed on a time basis.* The rates per hour under subdivision (i) of this subparagraph for harvest work shall be increased in the amounts per hour hereinafter stated for each full one-tenth cent per pound by which the season's average price of raw cane sugar as defined in S.D. 874.16 (28 F.R. 11049) exceeds 6.70 cents per pound:

	Cents per hour
Operators of mechanical loading or harvesting equipment.....	1.7
Tractor drivers, truck drivers, and harvester bottom blade operators.....	1.5
Loaders, spotters, ropemen, grabmen, and teamsters.....	1.5
Cutters, toppers, strippers, scrappers, behind loaders, cutters and loaders, pilers, and hoist operators.....	1.3
All other harvesting workers.....	1.3

(For producers who market sugarcane on a weekly average price basis, the simple average of the weekly average prices for raw sugar for the weeks in which such producers' sugarcane was marketed shall be used instead of the season's average price.)

Provided, That: (a) The hourly rates for harvest workers, including bonuses, shall not exceed the rates shown below:

	Per hour
Operators of mechanical loading or harvesting equipment.....	\$1.45
Tractor drivers, truck drivers, and harvester bottom blade operators.....	1.35
Loaders, spotters, ropemen, grabmen, and teamsters.....	1.30
Cutters, toppers, strippers, scrappers, behind loaders, cutters and loaders, pilers, and hoist operators.....	1.20
All other harvesting workers.....	1.15

(b) The bonus payment shall not apply to any producer whose 1963 crop is so substantially damaged by natural disaster or climatic conditions that the production of sugar per acre from his farm

is less than 90 percent of the previous 5-year average (or the average of the actual number of years of production on the farm, if less than 5 years).

(c) The amount of the bonus payment may be decreased by the ratio that the total tonnage on a farm of salvage sugarcane, frozen sugarcane to which acidity deductions have been applied, or frozen sugarcane which has been processed on a toll basis, bears to the total tonnage of all sugarcane harvested on the farm.

(d) The bonus payment shall not apply to any worker who has not been employed by a producer for a minimum of 54 hours during the harvest of the 1963 crop.

(iv) *Other piecework rates.* For any piecework performed on a unit basis for which a rate is not specified in subdivision (i) of this subparagraph, the rate shall be as agreed upon between the producer and worker: *Provided,* That the hourly rate of earnings of each worker employed on piecework during each pay period (such pay period not to be in excess of two weeks), shall average for the time worked at piecework rates during such pay period not less than the applicable hourly rate prescribed in subdivisions (i), (ii), and (iii) of this subparagraph.

Effective date. The provisions of this amendment shall become effective on the date of filing for public inspection in the Office of the Federal Register.

Statement of bases and considerations. The wage determination for persons employed on sugarcane farms in Louisiana, issued on October 18, 1963, included a provision whereby harvest workers would receive a bonus of 1.5 cents per hour for each full one-tenth cent per pound by which the season's average price for raw cane sugar as defined in S.D. 874.16, exceeds the average per pound for raw cane sugar for the three-year period, 1957-59, as adjusted by the relationship of the average parity indexes for the five-month period, October 1963 through February 1964, to the average parity indexes for the three-year period, 1957-59. This provision would not be effective if the 1963 crop was so substantially damaged by weather that the total outturn of sugar from the crop was less than 500,000 tons.

Following the issuance of the determination, the Department has continued to study the situation and in order to minimize certain inequities in the bonus provision has concluded that modification is needed to make that provision more equitable to individual producers and individual workers.

The hourly rate increase of 1.5 cents per hour for all classes of workers has been modified so that the more highly skilled worker will receive a larger hourly increase than will the less skilled workers. This change preserves the proportional relationship among wages for all workers regardless of the level of bonus paid. These increases will range from 1.7 cents per hour for operators of loading or harvesting equipment to 1.3 cents per hour for the two lower classifications of workers. The increase of 1.5 cents per hour is unchanged for the two medium classes of workers which include drivers of tractor and trucks, loaders,

spotters, ropemen and similar workers. This modification gives workers as a group about the same share as they would have received under the original provision of any price increase up to a total price for raw sugar of about 9 cents per pound.

This amendment also provides that the bonus payment does not apply to individual producers whose 1963 crop may be substantially below normal. This is in lieu of the proviso of the determination which made the bonus payment inapplicable if the total 1963 crop of raw sugar production fell below 500,000 tons.

A ceiling also has been placed on the total amount of the hourly wage rate including bonus. This ceiling ranges from \$1.45 per hour for the highest skilled workers to \$1.15 per hour for the least skilled workers. These rates will be attained if sugar prices average 9.0 cents per pound or higher. Wage rates higher than the ceilings set herein could result in rates higher than those received by more skilled factory workers, and would also exceed wage payments to many other workers in the locality.

This amendment also provides a fixed price of 6.70 cents per pound of raw sugar instead of basing such price on the parity index. This price is approximately the price that would result from application of the parity index formula but has the advantage of providing to producers and workers an immediately determinable basis with which to compare the season's average price.

Workers who have not been employed on an individual farm for a minimum of 54 hours of the harvest work will not qualify for bonus payments. Workers who are so employed for more than 54 hours qualify for the full period of their employment.

If a producer has agreed to pay higher rates than the prescribed basic minimum rates, the amount of excess payments resulting therefrom may be credited against the bonus payment required by this amendment.

The bonus payment is not applicable to work performed on a piecework basis for which specific rates are prescribed. However, the bonus payment is applicable to the minimum hourly guarantee of earnings to workers employed at agreed upon piecework rates.

This amendment will become effective on the date on which filed for public inspection with the FEDERAL REGISTER. The bonus provision as originally issued under § 864.10 will be effective from October 18, 1963, until the effective date of this amendment.

Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies sec. 301, 61 Stat. 929, as amended; 7 U.S.C. 1132, Act of Congress approved July 13, 1962)

Signed at Washington, D.C., on November 4, 1963.

CHARLES S. MURPHY,
Acting Secretary.

[F.R. Doc. 63-11772; Filed, Nov. 4, 1963; 3:04 p.m.]

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

[Milk Order No. 96]

PART 1096—MILK IN NORTHERN LOUISIANA MARKETING AREA

Order Suspending Certain Provision

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Northern Louisiana marketing area (7 CFR, Part 1096), it is hereby found and determined that:

(a) The following provision of the order no longer tends to effectuate the declared policy of the Act for the month of November 1963:

In § 1096.51(a) the provision "For the months of June 1962 through August 1963".

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions

and to maintain orderly marketing conditions in the marketing area.

(3) At the hearing held on August 8, 1963, consideration was given to the future level of Class I prices under the Northern Louisiana order. After the hearing, suspension action was taken to continue the Class I pricing provisions for September and October 1963.

The Assistant Secretary issued his recommended decision on October 29, 1963, to continue the present level of Class I pricing. This action is necessary since there is not sufficient time in which to carry out the procedures for amending the order to provide Class I prices beyond the present October 31 expiration date.

Therefore, good cause exists for making this order effective November 1, 1963. *It is therefore ordered*, That the aforesaid provision of the order is hereby suspended for the month of November 1963.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective date: November 1, 1963.

Signed at Washington, D.C., on November 1, 1963.

CHARLES S. MURPHY,
Acting Secretary.

[F.R. Doc. 63-11710; Filed, Nov. 5, 1963; 8:45 a.m.]

[Milk Order No. 97]

PART 1097—MILK IN MEMPHIS, TENN., MARKETING AREA

Order Amending Order

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AUTHORITY: §§ 1097.0 to 1097.111 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1097.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable

Shelby and Tipton; the Mississippi counties of De Soto, Tate, Panola (except the village of Crowder), Tunica, Lafayette and Marshall (exclusive of Beat 5); and the townships of Mississippi and Proctor in Crittenden County, Arkansas.

§ 1097.7 Fluid milk plant.

"Fluid milk plant" means:

- (a) Any milk processing or bottling plant from which a volume of Class I milk equal to an average of 1,000 pounds or more per day, or not less than 5.0 percent of the Class I milk of such plant is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except other fluid milk plants) located in the marketing area;
- (b) Any plant from which during the month Grade A milk, skim milk or the milk equivalent in the form of cream in excess of 70,000 pounds is moved to and received at a plant(s) described pursuant to paragraph (a) of this section and any of the skim milk or butterfat contained in such products would be allocated to Class I pursuant to § 1097.46 if such plant were not a fluid milk plant.

§ 1097.8 Approved plant.

"Approved plant" means a fluid milk plant or any plant from which Class I milk is delivered (including delivery by a vendor or sale from a plant store) during the month to retail or wholesale outlets (except fluid milk plants) located in the marketing area.

§ 1097.9 Nonfluid milk plant.

"Nonfluid milk plant" means any milk manufacturing, processing or bottling plant other than a fluid milk plant.

§ 1097.10 Handler.

"Handler" means:

- (a) Any person in his capacity as the operator of one or more approved plants.
- (b) Any cooperative association with respect to milk of its member producers diverted by it from a fluid milk plant to a nonfluid milk plant for the account of such cooperative association;
- (c) Any cooperative association with respect to the milk of its member producers which it causes to be delivered directly from the farm to the fluid milk plant(s) of another handler in a bulk tank truck owned and operated by, or under contract to, or under control of, such cooperative association, if the co-

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Memphis, Tennessee, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended as follows:

DEFINITIONS

§ 1097.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1097.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the power or to perform the duties of the said Secretary of Agriculture.

§ 1097.3 Department of Agriculture.

"Department of Agriculture" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions specified in this part.

§ 1097.4 Person.

"Person" means any individual, partnership, corporation, association, or other business unit.

§ 1097.5 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

- (a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and
- (b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1097.6 Memphis, Tennessee, marketing area.

"Memphis, Tennessee, marketing area" means all the territory, including incorporated municipalities and military reservations, within the Tennessee counties of Fayette, Hardeman (except Civil Districts 5 and 6), Haywood, Lauderdale, Madison (except Civil Districts 4 and 9),

- (ii) By a cooperative association with respect to all:
- (a) Milk for which such cooperative association is a handler pursuant to § 1097.10(b); and
- (b) Milk for such cooperative association is accountable pursuant to § 1097.10(c) in excess of that specified in subdivision (i) of this subparagraph.

(b) *Additional findings.* (1) It is necessary in the public interest to make this order amending the order effective not later than November 1, 1963. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

(2) The provisions of the said order are known to handlers. The recommended decision of the Assistant Secretary was issued September 30, 1963, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued October 25, 1963. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective November 1, 1963, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011)

(c) *Determinations.* It is hereby determined that:

- (1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;
- (2) The issuance of this order, amending the order, is the only practical means, pursuant to the declared policy of the Act, of advancing the interests of producers as defined in the order as hereby amended; and
- (3) The issuance of the order amending the order is approved or favored by at least three-fourths of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Memphis, Tennessee, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burdened, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, four cents per hundredweight or such amount not to exceed four cents per hundredweight as the Secretary may prescribe, as follows:

- (i) By each handler pursuant to § 1097.10(a) with respect to all:
- (a) Receipts of milk from producers (including such handler's own production) and from cooperative associations which are handlers pursuant to § 1097.10(c); and
- (b) Other source milk received at a fluid milk plant classified as Class I milk; and

operative association notifies the market administrator and the handler to whom the milk is delivered in writing that it wishes to become the handler for such milk. The cooperative association shall be considered the handler for such bulk tank milk, effective the first day of the month following receipt of such notice, and shall account for the actual receipts from each producer as determined at the farm at prices applicable to receipts from producers at plants to which the cooperative association delivers the milk.

§ 1097.11 Producer.

"Producer" means any person except a producer-handler who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is:

- (a) Received at a fluid milk plant; or
- (b) Diverted from a fluid milk plant to a nonfluid milk plant, except a milk plant fully subject to the provisions of another order issued pursuant to the act for the account of the handler. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the plant from which it was diverted.

§ 1097.12 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk from producers (in an amount determined by weights and measurements for individual producers, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is:

- (a) Received directly from producers at a fluid milk plant;
- (b) Diverted pursuant to § 1097.11; or
- (c) Received by a cooperative association which is a handler pursuant to § 1097.10(c).

§ 1097.13 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

- (a) Receipts during the month in the form of fluid milk products except:
- (1) Receipts from the fluid milk plants of other handlers or from a cooperative association which is a handler pursuant to § 1097.10(c); or
- (2) Producer milk; and
- (b) Products other than fluid milk products from any source (including those produced by the handler) which

tion as he deems advisable and as do not reveal confidential information.

are reprocessed or converted to another product during the month.

§ 1097.14 Producer-handler.

"Producer-handler" means any person who operates an approved plant from which Class I milk is disposed of in the marketing area but who receives no milk from other dairy farmers.

§ 1097.15 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department of Agriculture.

§ 1097.16 Fluid milk product.

"Fluid milk product" means the fluid form of milk, skim milk, buttermilk, plain or flavored milk drinks, sweet and sour cream (except aerated and frozen cream); and any mixture in fluid form of milk, skim milk and cream except mixes for frozen dairy products. Egnog and sour cream mixtures to which cheese or any food substance other than a milk product has been added shall be considered as fluid milk products only if disposed of under a Grade A label.

§ 1097.17 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1097.81.

§ 1097.18 Excess milk.

"Excess milk" means milk received by a handler from a producer during any of the months of March through July, which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1097.81.

MARKET ADMINISTRATOR

§ 1097.20 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of the Secretary.

§ 1097.21 Powers.

The market administrator shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To receive, investigate, and report to the Secretary complaints of violations;
- (c) To make rules and regulations; and
- (d) To recommend amendments to the Secretary.

§ 1097.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

- (a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;
- (b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;
- (c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;
- (d) Pay out of the funds provided by § 1097.97 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses, except those incurred under § 1097.96, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;
- (e) Keep such books and records as will clearly reflect the transactions provided for herein, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;
- (f) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;
- (g) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or person upon whose

utilization the classification of skim milk or butterfat for such handler depends;

- (h) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person, who after the date upon which he is required to perform such acts, has not made reports pursuant to § 1097.30 and § 1097.31 or payments pursuant to § 1097.90;
- (i) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, and notify each handler in writing, the prices determined for each month as follows:

- (1) On or before the 5th day of each month, the minimum price for Class I milk computed pursuant to § 1097.51(a) and the Class I butterfat differential computed pursuant to § 1097.52(a), both for the current month, and the minimum price for Class II milk computed pursuant to § 1097.51(b) and the Class II butterfat differential computed pursuant to § 1097.52(b), both for the previous month; and

- (2) On or before the 13th day of each month, the uniform price(s) for each handler computed pursuant to § 1097.71 or 1097.72, as applicable, the location differential for each handler computed pursuant to § 1097.93, and the butterfat differential computed pursuant to § 1097.92, all for the preceding month;
- (j) Notify each handler in writing on or before the 11th day of each month the amount of the net obligation of such handler for milk received from producers during the previous month. Such notification shall show the amount and the value of milk in each class, the amount and the value of overage, and the amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months;
- (k) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the percentage of milk delivered by such association or by its members which was allocated to each class by each handler receiving such milk.

- (1) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information.

ness of:
(i) Two percent of milk received directly from producers except milk diverted pursuant to § 1097.11(b); plus
(ii) One and one-half percent of milk received in bulk tank lots from fluid milk plants of other handlers and from cooperative associations which are handlers pursuant to § 1097.10(c); less
(iii) One and one-half percent of milk disposed of in bulk tank lots to other plants; less
(iv) One and one-half percent of milk disposed of to plants by a cooperative association handler pursuant to § 1097.10(c);
(6) In shrinkage allocated to other source milk pursuant to § 1097.42(b) (1); and
(7) The utilization of which is established as disposed of in bulk to bakeries, candy or soup manufacturers, and other commercial food manufacturing establishments which do not dispose of fluid milk products.

§ 1097.42 Shrinkage.

The market administrator shall allocate shrinkage to handler's receipts as follows:

- (a) Compute the total shrinkage of skim milk and butterfat for each handler; and
- (b) For each handler prorate the resulting respective amounts between:
 - (1) The pounds of skim milk and butterfat in other source milk received in the form of fluid milk products; and
 - (2) Fifty times the maximum pounds of skim milk and butterfat pursuant to § 1097.41(b) (5).

§ 1097.43 Responsibility of handlers and reclassification of milk.

All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1097.44 Transfers.

Skim milk and butterfat transferred and moved from the fluid milk plant of a handler (including diverted milk in the case of transfers to nonfluid milk plants), or by a cooperative association which is a handler pursuant to § 1097.10(c), shall be classified as follows:

der shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1097.40 Skim milk and butterfat to be classified.

All skim milk or butterfat received within the month by handlers and which is required to be reported pursuant to § 1097.30 shall be classified by the market administrator pursuant to the provisions of § 1097.41 through § 1097.46.

§ 1097.41 Classes of utilization.

Subject to the conditions set forth in §§ 1097.43 and 1097.44, the classes of utilization shall be as follows:

- (a) *Class I milk.* Class I milk shall be all skim milk (including concentrated and reconstituted skim milk) and butterfat:
- (1) Disposed of in the form of fluid milk products except:
 - (i) Fluid milk products classified as Class II pursuant to paragraph (b) (3);
 - (ii) (4) and (7) of this section; and
 - (iii) Fluid milk products which are fortified with additional milk solids shall be Class I in an amount equal only to the weight of an equal volume of an unfortified product of the same butterfat content; and
 - (2) Not specifically accounted for as Class II milk.
- (b) *Class II milk.* Class II milk shall be all skim milk and butterfat:
- (1) Used to produce any product other than a fluid milk product;
- (2) Contained in ending inventory of fluid milk products;
- (3) In fluid milk products disposed of and used for livestock feed or in fluid milk products which are dumped, if the market administrator has been notified in advance and afforded the opportunity to verify such dumping;
- (4) The weight of skim milk in fortified fluid milk products which is not classified as Class I pursuant to subparagraph (a) (1) (ii) of this section;
- (5) In actual shrinkage of skim milk and butterfat, respectively, allocated pursuant to § 1097.42.

er shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1097.32 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

- (a) The receipt and utilization of all skim milk and butterfat handled in any form.
- (b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and milk products handled;
- (c) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and milk products on hand at the beginning and end of each month.

§ 1097.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain. If, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15) (A) of the Act or a court

tion as he deems advisable and as to not reveal confidential information.

REPORTS, RECORDS AND FACILITIES

§ 1097.30 Reports of receipts and utilization.

By mailing on or before the 6th day after the end of each month, or by delivery not later than the 8th day after the end of such month, each handler (except a producer-handler) for each of his approved plants and any cooperative association with respect to milk for which it is a handler pursuant to § 1097.10 (b) or (c), shall report for such month to the market administrator in detail and on forms prescribed by the market administrator the following:

- (a) The quantities of skim milk and butterfat contained in receipts of producer milk;
- (b) The quantities of skim milk and butterfat contained in fluid milk products received from other handlers;
- (c) The quantities of skim milk and butterfat contained in other source milk;
- (d) The quantities of skim milk and butterfat contained in beginning and ending inventories of fluid milk products; and
- (e) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk outside the marketing area.

§ 1097.31 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler operating a fluid milk plant and any cooperative association which is a handler pursuant to § 1097.10 (b) or (c), shall report to the market administrator in detail and on forms prescribed by the market administrator:

- (1) On or before the 21st day of each month, the name and address or appropriate identification of each producer from whom milk was received during the first 15 days of such month, the total pounds of milk received from each producer, the location at which such milk was received, the amount of any deductions authorized in writing by producers from whom such handler received milk, the total pounds of milk received from

(a) The skim milk and butterfat in milk received by a fluid milk plant from a cooperative association which is a handler pursuant to § 1097.10(c) shall be included as producer milk classified at the plant of the transferee handler;

(b) As Class I if transferred to a fluid milk plant of another handler in the form of fluid milk products unless the operators of both plants claim utilization thereof in Class II in their reports submitted pursuant to § 1097.30. The skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the receiving handler after the subtraction of other source milk pursuant to § 1097.46, and any additional amounts of such skim milk or butterfat shall be assigned to Class I milk. If either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I milk utilization to producer milk;

(c) As Class I if transferred to the plant of a producer-handler in the form of fluid milk products;

(d) The skim milk and butterfat transferred to a nonfluid milk plant which is a fully regulated plant under another order issued pursuant to the Act shall be classified pursuant to the utilization assigned pursuant to the classification and allocation procedure of the other Federal order. In the event such nonfluid milk plant received skim milk or butterfat from two or more plants regulated by order(s) other than that under which it is regulated the amount classified in each class shall be a pro rata share of such receipts allocated to that class.

(e) As Class I if transferred in the form of fluid milk products to a nonfluid milk plant (except as specified in paragraph (d) of this section) which is not the plant of a producer-handler, unless:

(1) The transferee plant is located less than 225 miles from the city hall in Memphis, Tennessee, by the shortest highway distance open to commercial truck traffic as determined by the market administrator;

(2) The transferring handler claims utilization as Class II in the report due pursuant to § 1097.30;

(3) The operator of the nonfluid milk plant keeps accurate books and records showing the utilization of milk in the plant.

showing the utilization of all skim milk and butterfat received at such plant, and the market administrator is permitted to audit such books and records for the purpose of verification.

(4) Such nonfluid milk plant actually used an amount of skim milk or butterfat, respectively, equivalent to the total claimed as Class II (pursuant to § 1097.41 (b) (1)) by all handlers transferring or diverting milk from fluid milk plants to such nonfluid milk plant plus that priced in a comparable class under another order (issued pursuant to the Act) on the basis of utilization in such plant. Should the equivalent utilization in the nonfluid milk plant be less than the required total, a pro rata share of the excess shall be classified as Class I.

§ 1097.45 Computation of the skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors, the reports of receipts and utilization of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler. The skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 1097.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1097.45, the market administrator shall determine the classification of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk computed pursuant to § 1097.41(b) (5);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk received as other source milk not in the form of fluid milk products;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk.

milk received in the form of fluid milk products except that to be subtracted pursuant to subparagraph (4) of this paragraph;

(4) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in fluid milk products received from plants regulated under another order(s) issued pursuant to the Act, and classified and priced as Class I milk pursuant to such other order(s);

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(6) Subtract from the remaining pounds of skim milk in each class the skim milk received from fluid milk plants of other handlers in the form of fluid milk products as determined pursuant to § 1097.44(b);

(7) Add to the remaining pounds of skim milk in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(8) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk subtract such excess from the remaining pounds of skim milk in series beginning with Class II milk. Any amount so subtracted shall be known as "overage."

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of the Class I and Class II milk allocated to producer milk.

MINIMUM PRICES

§ 1097.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butter-

fat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1097.51 Class prices.

Subject to the provisions of § 1097.52 and § 1097.53, the minimum prices per hundredweight to be paid by each handler for milk received from producers during the month shall be as follows:

(a) *Class I milk.* The price per hundredweight for Class I milk for the month shall be the basic formula price for the preceding month, plus \$1.50 in each of the months of March through July and \$1.91 in all other months plus or minus a supply-demand adjustment computed as follows:

(1) Divide the total pounds of producer milk in the second and third months preceding by the total gross pounds of Class I milk (excluding inter-handler transfers and any intermarket transfers that would result in the same milk being accounted for the second time as Class I milk) in the same months of handlers fully regulated under this part and Parts 1102 (Fort Smith marketing area) and 1108 (Central Arkansas marketing area), of this chapter, multiply the result by 100, and round to the nearest whole number. The result shall be known as the "current utilization percentage".

(2) Compute a "deviation percentage" as follows:

(i) If the current utilization percentage is neither less than the minimum standard utilization percentage specified below nor in excess of the maximum standard utilization percentage specified below, the deviation percentage is zero;

(ii) Any amount by which the current utilization percentage is less than the minimum standard utilization percentage specified below is a "minus deviation percentage";

(iii) Any amount by which the current utilization percentage exceeds the maximum standard utilization percentage specified below is a "plus deviation percentage".

Delivery period for which price is computed

Percentages

Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk.

To be made in sequence according to the location differential applicable at each handler's plant.

milk and in milk received from a cooperative association which is a handler pursuant to § 1097.10(c), during each month shall be a sum of money computed by the market administrator as follows:

- (a) Multiply the pounds of such milk in each class by the applicable class price;
- (b) Add together the resulting amounts;
- (c) Add the amounts computed by multiplying the pounds of overage deducted from each class by the applicable class price;
- (d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months;
- (e) Add an amount computed by multiplying by the difference between the appropriate Class II milk price for the preceding month and the appropriate Class I price for the current month the lesser of:
 - (1) The hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1097.46(a) (5) and the corresponding step of § 1097.46(b); or
 - (2) The hundredweight of skim milk and butterfat remaining in Class II milk for the preceding month after the calculation pursuant to § 1097.46(a) (6) and the corresponding step of § 1097.46(b).
- (f) In computing, for the purposes of § 1097.71, the net obligation of a cooperative association which is a handler pursuant to § 1097.10(c) the value of milk received by fluid milk plants of other handlers shall be the sum of the amounts assigned pursuant to § 1097.71(c) with respect to such milk, adjusted at rates set forth in § 1097.92 and § 1097.93 for butterfat content and location of the fluid milk plant to which delivered.

§ 1097.71 Computation of uniform prices for handlers.

For each of the months through January 1965 and for the months August through February thereafter, the market administrator shall compute for each handler a uniform price with respect to his producer milk as follows:

- (a) Add to the amount computed pursuant to § 1097.70 the total of the location differential deductions applicable pursuant to § 1097.93;

to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 1097.54 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 1097.60 Producer-handler.

Sections 1097.40 through 1097.46, 1097.50 through 1097.53, 1097.70 through 1097.72, 1097.80 through 1097.83, and 1097.90 through 1097.97 shall not apply to a producer-handler.

§ 1097.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be considered a nonfluid milk plant except that the operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require, in lieu of the reports required pursuant to § 1097.30, and allow verification of such reports by the market administrator.

(a) Any plant qualified pursuant to § 1097.7(a) which would be subject to the classification and pricing provisions of another order unless a greater volume of Class I milk was disposed of from such plant during the six-month period immediately preceding to retail or wholesale outlets (except fluid milk plants) in the Memphis, Tennessee, marketing area than in the marketing area regulated pursuant to such other order.

(b) Any plant qualified pursuant to § 1097.7(b) which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant was qualified as a fluid milk plant during each of the preceding months of September through December.

DETERMINATION OF UNIFORM PRICES

§ 1097.70 Net obligations of handlers.

The net obligation of each handler for skim milk and butterfat, in producer

subparagraph (2) of this paragraph for the second preceding month.

(b) *Class II milk.* The class II milk price shall be the basic formula price computed pursuant to § 1097.50.

§ 1097.52 Butterfat differential to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices calculated pursuant to § 1097.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the previous month by 0.12;

(b) *Class II price.* Multiply the Chicago butter price for the month by 0.115.

§ 1097.53 Location differentials to handlers.

For that milk which is received at a fluid milk plant from producers or from a cooperative association which is a handler pursuant to § 1097.10(c), located 50 miles or more from the city hall in Memphis, Tennessee, by shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred in the form of products designated as Class I milk in § 1097.41 to another fluid milk plant and assigned to Class I pursuant to the calculation provided by the last paragraph of this section, or otherwise classified as Class I milk, the price specified in § 1097.51(a) shall be adjusted at the rate set forth in the following schedule according to the location of the fluid milk plant where such milk is received:

Rate per hundredweight

For each additional 10 miles in excess of 50 miles from the city hall in Memphis.	60	Add 9 cents.
For each additional 10 miles in excess of 50 miles from the city hall in Memphis.	60	Add an additional 1.5 cents.
For each additional 10 miles in excess of 50 miles from the city hall in Memphis.	60	Subtract 9 cents.
For each additional 10 miles in excess of 50 miles from the city hall in Memphis.	60	Subtract an additional 1.5 cents.

for such plant, and after deducting from such remainder an amount equal to 0.05 times the skim milk and butterfat contained in producer milk at the receiving plant including receipts at such plant for which a cooperative association is the handler pursuant to § 1097.10(c), such assignment to the transferring plant(s)

Delivery period for which price applies	Delivery period used in computation	Percentages
January	October-November	108
February	November-December	107
March	December-January	107
April	January-February	106
May	February-March	106
June	March-April	105
July	April-May	105
August	May-June	104
September	June-July	103
October	July-August	102
November	August-September	101
December	September-October	100

(3) For a "minus deviation percentage" the Class I price shall be increased and for a "plus deviation percentage" the Class I price shall be decreased as follows:

- (i) One cent times each such percentage unit of deviation; plus
- (ii) One cent times the lesser of:
 - (a) Each percentage unit of deviation, or
 - (b) Each percentage unit of deviation of like direction (plus or minus, with any deviation percentage of opposite direction considered to be zero for purposes of computations of this subparagraph) computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding; plus
- (iii) One cent times the least of:
 - (a) Each percentage unit of deviation;
 - (b) Each percentage unit of deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding;

(c) Each percentage unit of deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding; or

Location of plant

In the State of Mississippi and 50 but less than 60 miles from the city hall in Memphis.

For each additional 10 miles in excess of 50 miles from the city hall in Memphis.

For each additional 10 miles in excess of 50 miles from the city hall in Memphis.

For each additional 10 miles in excess of 50 miles from the city hall in Memphis.

(b) On or before the 12th day after the end of each month, each handler operating a fluid milk plant shall pay to the market administrator an amount of money equal to such handler's net obligation for such month as determined pursuant to § 1097.70 less payments made pursuant to paragraph (a) of this section for such month and less proper deductions authorized in writing by producers from whom such handler received milk.

§ 1097.91 Payments to producers.

(a) On or before the last day of each month, the market administrator shall make payment to each producer for milk received from such producer during the first 15 days of such month by handlers from whom the appropriate payments pursuant to § 1097.90(a) have been received at not less than the Class II price per hundredweight for the preceding month.

(b) On or before the 15th day after the end of each month, the market administrator shall make payment to each producer for milk received from such producer or cooperative association during the month by each handler from whom the appropriate payments have been received pursuant to § 1097.90(b), such payments by the market administrator to be at not less than the uniform price(s) computed pursuant to § 1097.71 or 1097.72, as applicable, subject to the following adjustments:

- (1) Butterfat and location differentials pursuant to § 1097.92 and § 1097.93;
- (2) Less payments made pursuant to paragraph (a) of this section;
- (3) Less marketing service deductions pursuant to § 1097.96;
- (4) Less proper deductions authorized in writing by the producer;
- (5) Adjusted for any error in calculating payment to such individual producer for past months; and

(6) If the market administrator has not received full payment from any handler for such month, pursuant to § 1097.90, he shall reduce uniformly per hundredweight his payments due for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall make such balance of payment to such producers on or before the next date for making payments pursuant to this section, following

regulated under the terms of the Central Arkansas (Part 1108) or Fort Smith, Arkansas (Part 1102), orders during the month, multiply such producer's daily average base computed pursuant to § 1097.80 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1097.80 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1097.82 Base rules.

The following rules shall apply in connection with the transfer of daily average bases for each producer computed pursuant to § 1097.80.

(a) An entire base shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred; and

(b) If a base is held jointly, the entire base shall be transferable only upon receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1097.83 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer of the daily average base established by such producer.

PAYMENTS

§ 1097.90 Payments to market administrator.

(a) On or before the 25th day of each month each handler operating a fluid milk plant shall pay to the market administrator a sum of money calculated by multiplying the hundredweight of milk received from producers and from a cooperative association which is a handler pursuant to § 1097.10(c), during the first 15 days of such month by the Class II price for the preceding month, less proper deductions authorized in writing by producers from whom such handler received milk.

such handler pursuant to paragraph (a) of this section; and

(e) Divide the amount obtained in paragraph (d) of this section by the total hundredweight of base milk received by such handler. The result, less any fraction of a cent per hundredweight, shall be the uniform price for such handler for base milk of 3.5 percent butterfat content subject to adjustments pursuant to § 1097.93.

DETERMINATION OF BASE

§ 1097.80 Computation of daily average base for each producer.

Effective on and after September 1964, the daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1097, 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January, by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a plant which first became a fluid milk plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the plant had been a fluid milk plant during such period.

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1097.80 by the number of days in such month;

(b) If milk is received as producer milk during the same farm by more than one handler, multiply the daily average base for each handler by the number of days in such month.

§ 1097.81 Determination of monthly base of each producer.

Effective on and after September 1964 and subject to the rules set forth in § 1097.82, the market administrator shall calculate a monthly base for each producer for each of the months of March through July, as follows:

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1097.80 by the number of days in such month;

(b) If milk is received as producer milk during the same farm by more than one handler, multiply the daily average base for each handler by the number of days in such month.

(b) Add or subtract for each one-tenth percent that the average butterfat content of milk received by such handler from producers and from cooperative associations pursuant to § 1097.10(c) is less or more, respectively, than 3.5 percent, an amount computed by multiplying such difference by the butterfat differential to producers, and multiplying the result by the total hundredweight of such milk;

(c) For each handler operating a fluid milk plant receiving milk for which a cooperative association is the handler pursuant to § 1097.10(c), prorate the resulting amount between such milk and producer milk;

(d) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform prices for the preceding month;

(e) Divide the resulting amount by the total hundredweight of producer milk received by the handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content f.o.b. market.

§ 1097.72 Computation of the uniform prices for base and excess milk for handlers.

Effective on and after March 1965, for each of the months of March through July, the market administrator shall compute for each handler with respect to his producer milk, a uniform price for base milk and for excess milk as follows:

(a) Follow the computations and adjustments provided for in § 1097.71 (a) through (d);

(b) Compute the value of excess milk received by such handler from producers by multiplying the quantity of such milk not in excess of the total quantity of producer milk assigned to Class II milk for such handler by the Class II price; multiply the remaining excess milk by the Class I price and add together the resulting amounts;

(c) Divide the total value of excess milk obtained in paragraph (b) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for such handler for all excess milk of 3.5 percent butterfat content; (d) Subtract, for each handler, the value of the base milk obtained from the value of all milk obtained for that on which such balance of payment

the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of a handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is

amount as may be authorized by the member producers of such association from the payment to be made to such producers for whom the cooperative is performing the services specified in paragraph (b) of this section and pay such amounts to the cooperative association on or before the date for making payment to producers.

(b) *Marketing services to be rendered.* The monies received by the market administrator pursuant to paragraph (a) (1) of this section shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

§ 1097.97 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator, on or before the 15th day after the end of the month, for such month, 4 cents per hundredweight, or such amount not exceeding 4 cents per hundredweight as the Secretary may prescribe, as follows:

(a) By each handler pursuant to § 1097.10(a) with respect to all:

- (1) Receipts of milk from producers (including such handler's own production) and from cooperative associations which are handlers pursuant to § 1097.10(c); and
- (2) Other source milk received at a fluid milk plant classified as Class I milk; and

(b) By a cooperative association with respect to all:

- (1) Milk for which such cooperative association is a handler pursuant to § 1097.10(b); and
- (2) Milk for which such cooperative association is accountable pursuant to § 1097.10(c) in excess of that specified in paragraph (a) of this section.

§ 1097.98 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives

§ 1097.94 Statement to producers.

In making the payments pursuant to § 1097.91, the market administrator shall furnish each producer or cooperative association with a statement, in such form that it may be retained by the producer or cooperative association which shall show:

(a) The delivery period and the identity of the handler and the producer;

(b) The total pounds of milk received from the producer, including for the months of March through July, such producer's deliveries of base and excess milk.

(c) The average butterfat content of the total pounds of milk received from the producer during the month;

(d) The minimum rates at which payment to the producer or cooperative association is required under the provisions of §§ 1097.91, 1097.92 and 1097.93;

(e) The amount or rates per hundredweight of each deduction, together with a description of the respective deductions; and

(f) The net amount of payment to the producer or cooperative association.

§ 1097.95 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due the market administrator from such handler, or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1097.96 Marketing services.

(a) *Deductions.* The market administrator in making payments to producers pursuant to § 1097.91 shall:

- (1) Deduct 7 cents per hundredweight or such amount not exceeding 7 cents per hundredweight as may be prescribed by the Secretary, with respect to milk (other than milk of a handler's own production) of those producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association; or
- (2) If so requested in writing by a cooperative association, deduct such

that on which such balance of payment is received from such handler.

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section the market administrator shall, on or before the second day prior to the date payments are due to individual producers, make payment to a cooperative association which is authorized to collect payment for milk of its members and from which a written request for such payment has been received, and to a cooperative association with respect to milk for which it is a handler pursuant to § 1097.10(c), a total amount equal to, but not less than, the sum of the individual payments otherwise payable to such producers pursuant to this section.

§ 1097.92 Butterfat differential to producers.

The applicable uniform prices to be paid each producer pursuant to § 1097.91 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, at the rate shown in the schedule below, according to the price range within which the Chicago butter price for the month falls:

Butter price range (cents):	Rate (cents)
Not more than 17.50-----	2
17.50-22.499-----	2½
22.50-27.499-----	3
27.50-32.499-----	3½
32.50-37.499-----	4
37.50-42.499-----	4½
42.50-47.499-----	5
47.50-52.499-----	5½
52.50-57.499-----	6
57.50-62.499-----	6½
62.50-67.499-----	7
67.50-72.499-----	7½
72.50-77.499-----	8
77.50-82.499-----	8½
82.50-87.499-----	9
87.50-92.499-----	9½
92.50 and over-----	10

§ 1097.93 Location differentials to producers.

In making payment pursuant to § 1097.91, the applicable uniform prices for all milk received shall be adjusted according to the location of the fluid milk plant where such milk was received at the rate provided pursuant to § 1097.53.

Title 14—AERONAUTICS AND SPACE

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1464—TOBACCO

Subpart—Tobacco Loan Program

ELIGIBLE TOBACCO

Statement with respect to the tobacco price support loan program is amended for the purpose of redefining eligible tobacco.

Section 1464.1513 *Eligible tobacco*, is hereby amended to read as follows:

§ 1464.1513 Eligible tobacco.

Eligible tobacco shall be U.S. and Puerto Rican tobacco (as defined in the Agricultural Adjustment Act of 1938, as amended) which (a) has been properly identified in accordance with applicable tobacco Marketing Quota Regulations on a valid memorandum of sale issued from a "Within-Quota" Marketing Card or a "Within-Quota Limited Support" Marketing Card where marketing quotas are in effect; (b) has been delivered to the association by the producer prior to sale to any other person; (c) has been delivered to the association by the producer in lots identified by not more than one marketing card for each lot; (d) is in sound and merchantable condition; (e) is of a type and crop year for which price support is available; (f) is free and clear of any and all liens and encumbrances; and (g) was not produced on land owned by the Federal Government in violation of the provisions of a lease restricting the production of tobacco.

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054; 74 Stat. 6; 15 U.S.C. 714c, 7 U.S.C. 1441, 1445, 1421, 1423; sec. 125, 70 Stat. 198, 7 U.S.C. 1813)

Effective date: Date of signature.

Signed at Washington, D.C. on November 1, 1963.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 63-11733; Filed, Nov. 5, 1963; 8:47 a.m.]

office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1097.110 Agents.

The Secretary may by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 1097.111 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Effective date: November 1, 1963.

Signed at Washington, D.C., on October 30, 1963.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 63-11703; Filed, Nov. 4, 1963; 8:47 a.m.]

claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1097.100 Effective time.

The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1097.101.

§ 1097.101 Suspension or termination.

The Secretary may suspend or terminate this part or any provision hereof whenever he finds this part or any provision hereof obstructs or does not tend to effectuate the declared policy of the Act. This part shall terminate in any event whenever the provisions of the Act authorizing it cease to be in effect.

§ 1097.102 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1097.103 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's

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(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054; 74 Stat. 6; 15 U.S.C. 714c, 7 U.S.C. 1441, 1445, 1421, 1423; sec. 125, 70 Stat. 198, 7 U.S.C. 1813)

Effective date: Date of signature.

Signed at Washington, D.C. on November 1, 1963.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 63-11733; Filed, Nov. 5, 1963; 8:47 a.m.]

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Eligible tobacco shall be U.S. and Puerto Rican tobacco (as defined in the Agricultural Adjustment Act of 1938, as amended) which (a) has been properly identified in accordance with applicable tobacco Marketing Quota Regulations on a valid memorandum of sale issued from a "Within-Quota" Marketing Card or a "Within-Quota Limited Support" Marketing Card where marketing quotas are in effect; (b) has been delivered to the association by the producer prior to sale to any other person; (c) has been delivered to the association by the producer in lots identified by not more than one marketing card for each lot; (d) is in sound and merchantable condition; (e) is of a type and crop year for which price support is available; (f) is free and clear of any and all liens and encumbrances; and (g) was not produced on land owned by the Federal Government in violation of the provisions of a lease restricting the production of tobacco.

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054; 74 Stat. 6; 15 U.S.C. 714c, 7 U.S.C. 1441, 1445, 1421, 1423; sec. 125, 70 Stat. 198, 7 U.S.C. 1813)

Effective date: Date of signature.

Signed at Washington, D.C. on November 1, 1963.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 63-11733; Filed, Nov. 5, 1963; 8:47 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1464—TOBACCO

Subpart—Tobacco Loan Program

ELIGIBLE TOBACCO

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[Airspace Docket No. 62-WE-105]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

Alteration of Control Zone

Correction

In F.R. Doc. 63-11475 appearing in the issue for Thursday, October 31, 1963, at page 11613, in the 5th line of the description for Seattle, Wash. (NAS Seattle), the reference to "122°5'25'" should read "122°15'25'".

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. No. ER-396; Amdt. 17]

PART 221—CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Specifications Applicable Only to Loose-Leaf Tariff Publications

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 1st day of November 1963.

The Board, in ER-343 effective January 8, 1962, authorized the use of "posting" dates in lieu of "issued" dates on tariffs filed more than 30 days before the proposed effective date of the tariff. Complaints against tariffs containing a posting date must now be filed within 12 days after the posting date, thus giving the filing carrier early notice of opposition to the tariff.

In loose-leaf tariffs, the issued date or the posting date must appear on the title page (§ 221.31(a)(10)) and each interior page (§ 221.22(b)(4)). Since an original loose-leaf tariff is a single tariff publication, it was not considered necessary to state that the title page and the interior pages of such tariffs were to contain identical dates. Some tariff publishers, however, have interpreted the alternative provisions of §§ 221.31(a)(10) and 221.22(b)(4) as permitting the use of a posting date on the title page and an issued date on the interior pages of original loose-leaf tariffs and such tariffs have been rejected. The intermingling of posting dates and issued dates on original tariffs would be misleading as to the time for filing complaints. The Board has decided that § 221.22(b)(4) should be clarified to avoid future misunderstanding.

Since this amendment merely clarifies an existing rule, notice and public procedure hereon are unnecessary.

Accordingly, the Civil Aeronautics Board hereby amends § 221.22(b)(4) of Part 221 of the Economic Regulations (14 CFR Part 221), effective November 1, 1963, to read as follows:

§ 221.22 Specifications applicable only to loose-leaf tariff publications.

(b) Information required on all interior pages. Each original page and revised page following the title page of

a loose-leaf tariff shall contain the following information in the location specified:

- (4) In the lower left corner:
 - (i) The issued date of the page; or
 - (ii) The posting date of the page.
- (See § 221.31(a)(10).)

If an original tariff contains a posting date, all interior pages and the title page shall contain the same posting date and prescribed note.

(Secs. 204(a) and 403, 72 Stat. 743, 758; 49 U.S.C. 1324, 1373)

Effective: November 1, 1963.

Adopted: November 1, 1963.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 63-11730; Filed, Nov. 5, 1963; 8:46 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[General Order 58, 4th Rev.]

PART 221—DOCUMENTATION, TRANSFER OR CHARTER OF VESSELS

Miscellaneous Amendments

Effective November 15, 1963, §§ 221.4, 221.5 and 221.6 of this part are revised to read as follows:

§ 221.4 Approval of certain transactions covered by sec. 37, Shipping Act, 1916, as amended.

Subject to the exceptions stated in § 221.6, the Department of Commerce, Maritime Administration, hereby grants the approval required by section 37 of the Shipping Act, 1916, as amended (40 Stat. 901; 46 U.S.C. 835), to the following transactions:

(a) The sale, mortgage, lease, charter, delivery, or transfer and agreement for the sale, mortgage, lease, charter, delivery or transfer to any person not a citizen of the United States of vessels as defined in § 221.5, or of any interest therein, owned in whole or in part by any person a citizen of the United States, or by a corporation organized under the laws of the United States, or of any State, Territory, District, or Possession thereof, and which are not documented under the laws of the United States, or the last documentation of which was not under the laws of the United States;

(b) The transfer to, or placing under, any foreign registry or flag of any such vessel;

(c) The entrance into any contract, agreement, or understanding to construct such vessel within the United States for, or to be delivered to, a person not a citizen of the United States;

(d) The making of agreements or the effecting of understandings whereby there is vested in or for the benefit of any

person not a citizen of the United States, the controlling interest or the majority of the voting power in a corporation which is organized under the laws of the United States or any State, Territory, District, or Possession thereof, and which owns such a vessel and which transaction is not otherwise subject to the provisions of section 37 of the Shipping Act, 1916, as amended; and

(e) The departure from any port of the United States of any vessel which was constructed in whole or in part within the United States, has not been documented under the laws of the United States, and has never cleared for any foreign port.

§ 221.5 Types of vessels approved by § 221.4.

The following types of vessels are approved by § 221.4: Undocumented vessels designed and fabricated specifically for recreational or commercial use, whether constructed or to be constructed when possessing all of the following characteristics:

(a) Having an overall length of 65 feet or less;

(b) Designed or equipped for propulsion by an engine or engines of the reciprocating type, totalling 600 horsepower (manufacturer's rated horsepower) or less;

(c) Designed for a full load displacement of less than 45 tons (For the purposes of this Order, it will be presumed that a vessel of less than 55 feet in length will have a displacement less than 45 tons. For vessels between 55 feet and 65 feet in length, the owner must supply to the local Customs inspector at the port of departure (1) a certificate of the builder as to the displacement tonnage of the vessel, or (2) a certificate of a naval architect as to the displacement tonnage of the vessel, or (3) a certificate of the owner as to the key dimensions of the vessel (length, beam and draft));

(d) Not of hydrofoil design;

(e) Not equipped with any navigational apparatus of the kinds or types requiring a validated license from the Bureau of International Commerce; and

(f) Not equipped with any munitions items of the kinds or types requiring a validated license from the State Department.

§ 221.6 Exceptions to approvals granted by §§ 221.4 and 221.5.

Approval granted by and defined in §§ 221.4 and 221.5 shall not apply to any transaction involving nationals of Cuba, or Hong Kong, or Macao, or to Subgroup A countries hereinafter named, whether residing in the United States or in foreign countries, or any person not a citizen of the United States residing in any such country, or to vessels exported to destinations within such countries. Subgroup A countries are: Albania, Bulgaria, Communist China (including Manchuria), Communist-controlled area of Viet Nam, Czechoslovakia, East Germany, Estonia, Hungary, Latvia, Lithuania, North Korea, Outer Mongolia, Rumania and the Soviet Union.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114; sec. 37, 40 Stat. 901; 46 U.S.C. 835)

Dated: October 30, 1963.

J. W. GULICK,
Deputy Maritime Administrator.

[F.R. Doc. 63-11728; Filed, Nov. 5, 1963;
8:46 a.m.]

SUBCHAPTER G—EMERGENCY OPERATIONS

[General Order 75, 2d Rev., Amdt. 3]

PART 308—WAR RISK INSURANCE

Miscellaneous Amendments

Effective as of midnight, December 7, 1963, G.m.t., Part 308 is hereby amended to reflect the following changes:

Amend § 308.6 *Period of interim binders and renewal procedure*, § 308.106 *Standard form of war risk hull insurance interim binder and optional disbursements insurance endorsement*, § 308.206 *Standard form of war risk protection and indemnity insurance interim binder*, and § 308.305 *Standard form of Second Seamen's war risk insurance interim binder*, by changing the expiration date contained therein to read "midnight, June 7, 1964, G.m.t."

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

Dated: October 30, 1963.

By order of the Maritime Administrator.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 63-11729; Filed, Nov. 5, 1963;
8:46 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 63-1000]

PART 0—COMMISSION ORGANIZATION

Delegated Matters

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of October 1963;

The Commission having under consideration the handling of requests for authority for television broadcast stations to operate experimentally with aural-to-visual power ratio other than that specified in the rules; and

It appearing, that such requests are routine in nature, that they could more expeditiously be acted upon by the Chief, Broadcast Bureau, and that authority to so act should be delegated to the Chief, Broadcast Bureau; and

It further appearing, that authority for the amendment adopted herein is contained in sections 4(i), 5(d), and 303 (r) of the Communications Act of 1934, as amended; and

It further appearing, that the amendment adopted herein involves an internal delegation of authority and hence that the prior notice and effective date provisions of section 4 of the Administrative Procedure Act are not applicable;

It is ordered, Effective November 12, 1963, That Part 0 of the Commission's rules and regulations is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: November 1, 1963.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

1. Section 0.241 of the Commission's rules and regulations is hereby amended by the addition of a new subparagraph (10) to paragraph (c) to read as follows:

§ 0.241 Matters delegated.

(c) * * *

(10) For authority for television broadcast stations to operate with visual-to-aural power ratio other than that specified in this chapter.

[F.R. Doc. 63-11747; Filed, Nov. 5, 1963;
8:47 a.m.]

[FCC 63-1008]

PART 0—COMMISSION ORGANIZATION

Delegated Matters

In the matter of amendment of Part 0 of the Commission's rules to delegate authority to the staff to deny waiver requests and dismiss associated ship station applications specifying non-type accepted radiotelephone transmitters and to delete certain delegated authority which is no longer applicable.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of October 1963;

The Commission having under consideration an additional delegation of authority to the staff;

It appearing, that it is desirable to authorize the Chief, Safety and Special Radio Services Bureau authority to deny waiver requests and dismiss associated ship station applications specifying non-type accepted radiotelephone transmitters in cases substantially the same as those in which the Commission en banc has taken similar action; and

It further appearing, that the delegation of authority contained in § 0.291 (b) (13) (i) should be deleted since this authority is no longer applicable after June 1, 1963, the effective date of the type acceptance requirement of § 8.139 of the rules.

It further appearing, that the amendments herein ordered are nonsubstantive in that they relate to organizational and procedural matters, and, hence, the public notice and effective date provisions of section 4 of the Administrative Procedure Act are not applicable; and

It further appearing, that authority for the issuance of this Order is contained in sections 4(i) and 5(d) (1) of the Communications Act of 1934, as amended:

It is ordered, Effective November 8, 1963, that Part 0 of the Commission's rules is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: November 1, 1963.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

A. Part 0 is amended as follows:

1. In § 0.291(b), subparagraph (13) is amended and subparagraph (14) is added, to read as follows:

§ 0.291 Matters delegated.

* * *

(b) * * *

(13) To grant, in the absence of unusual circumstances:

(i) A 4-year waiver and renewals thereof of the spurious emission limitations of § 8.136 of this chapter for any radiotelegraph transmitter that fails to qualify for the "same vessel" exception to those limitations solely because the set was formerly used in a U.S. Government or foreign station and, therefore, has never been licensed by the Commission.

(ii) A 6-month waiver of the type acceptance requirement of § 8.139 of this chapter in cases substantially the same as those in which the Commission en banc has taken similar action.

(14) To deny requests for waiver of the type acceptance requirement of § 8.139 of this chapter and dismiss associated applications for ship station licenses in cases substantially the same as those in which the Commission en banc has taken similar action.

[F.R. Doc. 63-11746; Filed, Nov. 5, 1963;
8:47 a.m.]

[FCC 63-1020]

PART 0—COMMISSION ORGANIZATION

Delegation of Authority

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 31st day of October 1963;

The Commission having under consideration § 0.292(e) of its rules and regulations on Commission Organization concerning delegation of authority to the Chief of its Safety and Special Radio Services Bureau; and

It appearing, that the public interest would be served by delegating authority to this official to act upon applications made pursuant to section 504(b) of the Communications Act of 1934, as amended, for mitigation or remission of forfeitures imposed under section 510 of the Act; and

It further appearing, that the matter ordered herein concerns internal organizations and procedure and, therefore, the prior notice and effective date provisions of section 4 of the Administrative Procedure Act are inapplicable; and

It further appearing, that authority for the matter ordered herein is contained in sections 4(i), 5(d), 504, and 510 of the Communications Act of 1934, as amended:

It is ordered, That, effective October 31, 1963, § 0.292(e) of the Commission's rules (47 CFR 0.292(e)) is amended to read as follows:

§ 0.292 Other matters delegated.

(e) Applications made pursuant to section 504(b) of the Communications Act of 1934, as amended, for mitigation or remission of forfeitures imposed under sections 364, 386, 507, and 510 of the Act.

Released: October 31, 1963.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-11745; Filed, Nov. 5, 1963;
8:47 a.m.]

[FCC 63-995]

PART 13—COMMERCIAL RADIO
OPERATORS

Miscellaneous Amendments

In the matter of amendment of Part 13 to provide for change in application procedure and to incorporate therein the schedule of fees for filing applications for Commission authorizations.

At a session of the Federal Communications Commission, held at its offices in Washington, D.C., on the 30th day of October 1963;

It appearing, that on May 6, 1963, the Commission in the proceeding in Docket 14507 adopted a fee schedule for its licensing and regulatory activities, effective January 1, 1964;

It further appearing, that on September 25, 1963, the Commission, having under consideration various petitions regarding its action of May 6, 1963, herein, made certain changes in the schedule of fees; and

It further appearing, that the fee schedule as revised and the rules pertaining thereto appear only in Part 1 (Subpart G) and that the pertinent portions of the fee schedule and rules should be included in the rule part governing Commercial Radio Operators; and

It further appearing, that examinations for commercial radio operator licenses conducted at designated places away from the Commission's engineering field offices would be conducted more expeditiously and efficiently if applications and related fees were submitted to the field offices in advance of the examinations and not submitted at the time the examinations are given; and

It further appearing, that the rule amendments ordered herein are editorial and procedural in nature and therefore the public rule-making procedures pro-

vided by sections 4 (a) and (b) of the Administrative Procedure Act are not applicable:

It is ordered, Pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that Part 13 is amended, effective January 1, 1964, as shown below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: November 1, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

1. Section 13.11(a) is amended to read:

§ 13.11 Procedure.

(a) General. Applications shall be governed by applicable rules in force on the date when application is filed (see § 13.28). The application in the prescribed form and including all required subsidiary forms and documents, properly completed and signed, and accompanied by the prescribed fee (see § 13.15), shall be submitted in person or by mail to the field office at which the applicant desires his application to be considered and acted upon, which office will make the final arrangements for conducting any required examination. Whenever an examination is to be taken at a designated examination point away from an office, the application shall be submitted in advance of the examination to the field office having jurisdiction over the area in which the examination is to be taken. Subject to other provisions of this paragraph, if the application is for renewal of license it may be filed at any time during the final year of the license term or during a 1 year period of grace after the date of expiration of the license sought to be renewed. During this 1 year period of grace an expired license is not valid. A renewed license issued upon the basis of an application filed during the grace period will be dated currently and will not be back-dated to the date of expiration of the license being renewed. A renewal application shall be accompanied by the license sought to be renewed. If the prescribed service requirements for renewal without examination (see § 13.28) are fulfilled, the renewed license may be issued by mail. If the service record on the reverse side of the license does not fully describe or cover the service desired by the applicant to be considered in connection with license renewal (as might occur in the case of service rendered at U.S. Government stations), the renewal application shall be supported by documentary evidence describing in detail the service performed and showing that the applicant actually performed such service in a satisfactory manner. A separate application must be submitted for each license

involved, whether it requests renewal, new license, endorsement, duplicate, or replacement.

2. The following new sections are added:

§ 13.14 Payment of fees.

(a) Each application for which a fee is prescribed in § 13.15 must be accompanied by a remittance in the full amount of the fee. In no case will an application for which a fee is prescribed be accepted for filing or processed prior to payment of the full amount specified. Applications for which no remittance is received, or for which an insufficient amount is received, may be returned to the applicant.

(b) Fee payments accompanying applications submitted to the Commission should be in the form of a check or money order payable to the Federal Communications Commission. The Commission will not be responsible for cash sent through the mails. All fees collected will be paid into the United States Treasury as miscellaneous receipts in accordance with the provisions of Title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140).

(c) Receipts will be furnished upon request in the case of payments made in person, but no receipts will be issued for payments sent through the mails.

(d) All fees will be charged irrespective of the Commission's disposition of the application. Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted. Refunds will be made only in the case of payments in excess of the fee prescribed in this part.

§ 13.15 Schedule of fees.

(a) Except as provided in paragraphs (b) and (c) of this section, applications filed on or after January 1, 1964 under this part must be accompanied by the fees prescribed below:

Applications for new operator license:	
First-class license, either radiotelephone or radiotelegraph.....	\$5
Second-class license, either radiotelephone or radiotelegraph.....	4
Third-class permit, either radiotelephone or radiotelegraph.....	3
Restricted radiotelephone permit.....	2
Application for renewal of operator license.....	2
Application for endorsement of operator license.....	2
Application for duplicate license or for replacement license.....	2

(b) No fee need accompany an application for a verification card (FCC Form 758-F) or for a verified statement (FCC Form 759).

(c) Whenever an application requests both an operator license and an endorsement the required fee will be the fee prescribed for the license document involved.

[F.R. Doc. 63-11748; Filed, Nov. 5, 1963;
8:47 a.m.]

Proposed Rule Making

FEDERAL AVIATION AGENCY

[14 CFR Part 71 [New]]

[Airspace Docket No. 63-WE-66]

FEDERAL AIRWAYS AND ASSOCIATED CONTROL AREAS

Proposed Alteration

Notice is hereby given that the Federal Aviation Agency (FAA) is considering amendments to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

VOR Federal airways Nos. 112 and 182 are designated in part as a common airway segment from Portland, Oreg., to The Dalles, Oreg., with common north alternate segments between these points.

The FAA has under consideration the revocation of the north alternate segments to these airways from Portland to The Dalles, as it appears that they are no longer needed for air traffic control purposes. The latest FAA IFR peak day airway traffic survey shows no aircraft movements on these north alternate airway segments. Therefore, it appears that the segments of V-112N and V-182N between Portland and The Dalles are unjustified as an assignment of airspace.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles, Calif., 90009. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room A-103, 1711 New York Avenue NW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on October 30, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 11706; Filed, Nov. 5, 1963; 8:45 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 63-WE-61]

SEGMENTS OF FEDERAL AIRWAYS AND REPORTING POINTS

Proposed Revocation

Notice is hereby given that the Federal Aviation Agency (FAA) is considering amendments to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

VOR Federal airway Nos. 298 and 1722 are designated in part from Casper, Wyo.; via Smithwick, S. Dak.; Winner, S. Dak.; to Sioux Falls, S. Dak.

The FAA is considering the following airspace actions:

1. Revocation of the segment of V-298 airway from Casper to Sioux Falls.
2. Revocation of V-1722 airway from Casper to Sioux Falls.
3. Revocation of Smithwick and Winner as intermediate altitude reporting points and Winner as a low altitude reporting point.

The FAA peak day airway traffic survey for V-298 showed only one aircraft movement for the segment between Casper and Smithwick and no aircraft movements for the segment between Smithwick and Sioux Falls. The same survey showed a total of two aircraft movements for the segment of V-1722 between Casper and Winner and one aircraft movement for the segment between Winner and Sioux Falls. Therefore, it appears that the segment of V-298 and V-1722 airway between Casper and Sioux Falls is unjustified as an assignment of airspace.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles, Calif., 90009. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented dur-

ing such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room A-103, 1711 New York Avenue NW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on October 30, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-11707; Filed, Nov. 5, 1963; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 3]

[Docket No. 15208; FCC 63-999]

VHF AND UHF TELEVISION BROADCAST STATIONS

Notice of Proposed Rule Making

In the matter of reduction in the aural-to-visual power ratio for VHF Television Broadcast Stations to make it consistent with the ratio required of UHF Television Broadcast Stations; Docket No. 15208.

1. On March 27, 1963, the Commission adopted the Second Report and Order in Docket No. 14229 (FCC 63-300) relaxing certain technical requirements for television broadcast stations operating on UHF Channels 14 through 83. One of the amendments adopted therein permits such UHF stations to operate with aural power output of from 10 percent to 70 percent of the peak visual power output. Several comments filed in that proceeding suggested that a similar modification be made with respect to television broadcast station operating on VHF Channels 2 through 13. Since that proceeding was concerned only with UHF operation action on the suggestions was deferred.

2. A number of TV receiver manufacturers have expressed concern that the different standards for VHF and UHF television stations may create problems in receiver design and have urged that we make the standards the same. They have also indicated that this problem may be compounded if the permissible

range of sound power is continued at 10 percent to 70 percent of the peak visual power. Experience with present day TV receivers shows that they are capable of operating successfully with a wide variation of aural to visual signal input ratio and we have no convincing evidence that the revised aural-to-visual power ratio requirements would require redesign of TV receivers. On the other hand, measurements and observations made on VHF stations similar to those made on UHF stations operating with various aural-to-visual power ratios show that the useful service area of VHF stations is not significantly impaired when operating with aural power at 10 percent of the peak visual power. Therefore, the amendment proposed herein will simply make the power ratio standards for VHF stations identical with those already adopted for UHF stations. However, any interested party holding the view that the 10 percent to 70 percent permissible range of aural power is too large may recommend a reduction in the permissible range.

3. Accordingly, it is proposed to amend § 3.682(a)(15) of the Commission rules to read as follows:

§ 3.682 Transmission standards and changes.

(a) *Transmission standards.* * * *

(15) The effective radiated power of the aural transmitter shall not be less than 10 percent nor more than 70 percent of the peak radiated power of the visual transmitter.

4. Pursuant to applicable procedures set out in § 1.213 of the Commission rules and regulations, interested persons may file comments on or before December 10, 1963, and reply comments on or before December 20, 1963. All relevant and timely comments and reply comments

will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

5. Authority for the amendments proposed herein is contained in sections 4(i) and 303(c) of the Communications Act of 1934, as amended.

6. In accordance with the provisions of § 1.215 of the rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. Attention is directed to the provisions of paragraph (c) of § 1.215 which requires that any person desiring to file identical documents in more than one docketed rule making proceeding shall furnish the Commission two additional copies of any such document for each additional docket unless the proceedings have been consolidated.

Adopted: October 30, 1963.

Released: November 1, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-11743; Filed, Nov. 5, 1963;
8:47 a.m.]

[47 CFR Part 3]

[Docket No. 15083; FCC 63-998]

ADVERTISING ON STANDARD, FM, AND TELEVISION BROADCAST STATIONS

Order Setting Oral Argument

In the matter of amendment of Part 3 of the Commission's rules and regula-

tions with respect to advertising on Standard, FM, and Television Broadcast Stations; Docket No. 15083.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of October 1963;

The Commission having under consideration: (1) Its notice of proposed rule making issued in the above-entitled proceeding on May 17, 1963; and (2) the numerous comments filed in response to said notice; and

It appearing, that because of the importance of this matter to the broadcasting industry and to the public, the Commission desires to hear oral argument from interested parties;

It is ordered, That oral argument will be held in this proceeding at the Commission's offices in Washington, D.C., on November 25, 1963;

And it is further ordered, That parties interested in participating in said oral argument shall notify the Secretary of the Commission in writing on or before November 10, 1963, briefly setting forth their position in this matter and the approximate amount of time they wish to use in argument;

And it is further ordered, That after the various requests filed pursuant hereto are received, the amount of time allowed to various parties will be specified by further Order, which will also set forth the order of presentation.

Adopted: October 30, 1963.

Released: October 30, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-11744; Filed, Nov. 5, 1963;
8:47 a.m.]

Notices

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

SUGAR BEETS IN CALIFORNIA

Notice of Hearing on Wages and Prices for 1964 Crop and Designa- tion of Presiding Officers

Pursuant to the authority contained in subsections (c) (1) and (c) (2) of section 301 of the Sugar Act of 1948, as amended (61 Stat. 929; 7 U.S.C. 1131) as amended by Public Law 87-535 approved July 13, 1962, and in accordance with the rules of practice and procedure applicable to wage and price proceedings (7 CFR 802.1 et seq.), notice is hereby given that a public hearing will be held on November 25, 1963, at Stockton, California, in the Meeting Room, Pacific Gas and Electric Building, 4040 West Lane, beginning at 10 a.m.

The purpose of this hearing is to receive evidence likely to be of assistance to the Secretary of Agriculture in determining (1), pursuant to the provisions of section 301(c) (1) of the Act, fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugar beets for the 1964 crop on farms with respect to which applications for payment under the Act are made, and (2) pursuant to the provisions of section 301(c) (2) of the Act, fair and reasonable prices for the 1964 crop of sugar beets to be paid under purchase or toll agreements by producers who process sugar beets grown by other producers and who apply for payments under the Act.

The hearing after being called to order at the time and place mentioned herein may be continued from day to day within the discretion of the presiding officers, and may be adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing by the presiding officers.

To obtain the best possible information, all interested persons are requested to appear at the hearing to express their views and present appropriate data in regard to the foregoing matters.

J. Murray Thompson and Ward S. Stevenson are hereby designated as presiding officers to conduct either jointly or severally the foregoing hearing.

Signed at Washington, D.C. on November 1, 1963.

H. D. GODFREY,
*Administrator, Agricultural Sta-
bilization and Conservation
Service.*

[F.R. Doc. 63-11731; Filed, Nov. 5, 1963;
8:47 a.m.]

11828

Office of the Secretary PENNSYLVANIA

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Pennsylvania a natural disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

Adams	Pennsylvania
Dauphin	Mifflin
Juniata	Perry
	York

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after December 31, 1964, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 31st day of October 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-11711; Filed, Nov. 5, 1963;
8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 15209; FCC 63-1005]

VINCENT R. BANVILLE, SR.

Order To Show Cause

In the matter of Vincent R. Banville, Sr., Fort Lauderdale, Florida, order to show cause why there should not be revoked the license for Radio Station KDH-1734 in the Citizens Radio Service.

The Commission having under consideration the matter of certain alleged violations of its rules in connection with the operation of the captioned station;

It appearing, that, on September 5 and November 16, 1962, and May 15, 1963, the antenna at a fixed location of Citizens Radio Station KDH-1734 exceeded 20 feet in height above the man-made structure on which it was mounted, in violation of § 19.25(c) of the Commission's rules; and

It further appearing, that, on September 27, October 9, November 3, November 10, December 9, and December 31, 1962, and January 13, and 17, and July 20,

1963, Citizens Radio Station KDH-1734 was used to intercommunicate with units of other stations in the Citizens Radio Service other than when necessary for the exchange of substantive messages related to the business or personal activities of the individuals concerned, in violation of § 19.61(a) of the Commission's rules; and

It further appearing, that, on November 10, 1962, January 13, and July 20, 1963, the exchanges of communications between Citizens Radio Station (Class D) KDH-1734 and other Citizens Radio Service stations exceeded 5 consecutive minutes, in violation of § 19.61(f) of the Commission's rules; and

It further appearing, that, on November 10, December 29, and December 31, 1962, and January 13, 1963, the call sign of Citizens Radio Station KDH-1734 was not transmitted at the beginning and at the termination of all communications, in violation of § 19.62 of the Commission's rules; and

It further appearing, that, on November 10 and December 9, 1962, and January 17 and 21, 1963, the licensee transmitted false or deceptive signals or communications by radio or identified the station he was operating by means of a call sign or signal which had not been assigned by proper authority to that station, in violation of § 19.83 of the Commission's rules; and

It further appearing, that the violations of the Commission's rules as set forth above, with the exception of the violation of § 19.25(c) of the rules occurring on May 15, 1963, were brought to the licensee's attention by the issuance of Official Notices of Violation on September 12, October 5, November 1, 15, 16, and 26, and December 20, 1962, and January 9, 14, 18, 30 and 31, and July 25, 1963; and

It further appearing, that, notwithstanding the licensee's receipt of the above-mentioned notices advising him of the violations of the Commission's rules described therein, the licensee continued to violate such rules; and

It further appearing, that, in view of the foregoing, the licensee has repeatedly and willfully violated §§ 19.25(c), 19.61(a), 19.61(f), 19.62 and 19.83 of the Commission's rules;

It is ordered, This 30th day of October 1963, pursuant to section 312(a) (4) and (c) of the Communications Act of 1934, as amended, that the licensee show cause why the license for the captioned radio station should not be revoked, and appear and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Secretary send a copy of this Order by Certified Mail—Return Receipt Requested to

the licensee at his last known address of 112 Southwest 24th Avenue, Fort Lauderdale, Fla.

Released: November 1, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-11735; Filed, Nov. 5, 1963;
8:47 a.m.]

[Docket No. 14567, 14568; FCC 63M-1176]

**D AND E BROADCASTING CO. AND
GREAT STATE BROADCASTERS, INC.**

Order Continuing Hearing

In re applications of Manuel G. Davila and Willie G. Egerton, d/b as D and E Broadcasting Co., San Antonio, Texas, Docket No. 14567, File No. BP-14442; Great State Broadcasters, Inc., San Antonio, Texas, Docket No. 14568, File No. BP-15032; for construction permits.

The Hearing Examiner having under consideration a petition to continue hearing filed by Great State Broadcasters, Inc. on October 23, 1963.

It appearing, that one of the principal witnesses will be unable to appear on the date of October 28, which is the currently scheduled date for further hearing, and that by continuing the proceeding it may be possible to complete the hearing in one day without a further continuance; and

It further appearing, that counsel for the other parties have no objection to this request;

It is ordered, This 25th day of October 1963, that the petition to continue hearing is granted, and that the hearing is continued from October 28 to November 14, 1963.

Released: October 25, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-11736; Filed, Nov. 5, 1963;
8:47 a.m.]

[Docket Nos. 15111, 15112; FCC 63M-1190]

**HOLSTON BROADCASTING CORP.
AND C. M. TAYLOR**

Order Continuing Hearing

In re applications of Holston Broadcasting Corporation, Elizabethton, Tennessee, Docket No. 15111, File No. BP-15012; C. M. Taylor, Blountville, Tennessee, Docket No. 15112, File No. BP-15115; for construction permits.

The Hearing Examiner having under consideration a letter dated October 23, 1963 from counsel for C. M. Taylor requesting the continuance of the hearing now scheduled for October 31, 1963;

It appearing, that the two applicants on September 16 filed a joint petition seeking approval of an agreement whereby Holston Broadcasting Corporation would dismiss its application and that such petition is still pending; and

It further appearing, that under the circumstances it would serve no useful

purpose to proceed with the hearing on the scheduled date;

It is ordered, This 28th day of October 1963, that the hearing is continued from October 31 to December 6, 1963.

Released: October 29, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-11738; Filed, Nov. 5, 1963;
8:47 a.m.]

[Docket Nos. 14597, 15203; FCC 63M-1206]

**KWEN BROADCASTING CO. AND
WOODLAND BROADCASTING CO.**

Notice of Prehearing Conference

In re applications of Felix Joynt and James Joynt d/b as Kwen Broadcasting Company, Port Arthur, Texas, Docket No. 14597, File No. BP-13627; Woodland Broadcasting Company, Vidor, Texas, Docket No. 15203, File No. BP-15973; for construction permits.

On October 29, 1963, the Commission released an Order (FCC 63-985) designating the above-named applicants for hearing in a consolidated proceeding and specifying the issues. The circumstances leading to the designation are recited in the Commission's Order and need not be repeated here. Pursuant to the Order the Hearing Examiner proposes to call a conference to establish a schedule for further proceedings and to take such other action as may be appropriate in the circumstances. Counsel are requested to be prepared to discuss stipulations and agreements designed to expedite the hearing.

Accordingly, notice is hereby given that there will be a prehearing conference on Monday, November 25, 1963, at 10:00 a.m. in Washington, D.C.

Dated: October 30, 1963.

Released: October 31, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-11739; Filed, Nov. 5, 1963;
8:47 a.m.]

[Docket Nos. 14597, 15203; FCC 63-985]

**KWEN BROADCASTING CO. AND
WOODLAND BROADCASTING CO.**

**Order Designating Applications for
Consolidated Hearing on Stated
Issues**

In re applications of Felix Joynt and James Joynt d/b as Kwen Broadcasting Company, Port Arthur, Texas, Docket No. 14597, File No. BP-13627; Requests: 1510 kc, 1 kw, day; Woodland Broadcasting Company, Vidor, Texas, Docket No. 15203, File No. BP-15973; Requests: 1510 kc, 1 kw, day; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 24th day of October 1963;

The Commission having under consideration (a) the above-captioned and described applications and (b) the petition of the Woodland Broadcasting Company for acceptance of the public notice of filing of the application pursuant to § 1.359 of the Commission's rules or, in the alternative for a waiver of the requirements of § 1.359 to permit acceptance of the public notice; and

It appearing, that, by Order of April 12, 1962, the Commission designated for hearing in a consolidated proceeding the mutually exclusive applications of the KWEN Broadcasting Company and the Vidor Broadcasting Company, Inc. (Docket No. 14599, File No. BP-14619);¹ and

It further appearing, that thereafter the KWEN Broadcasting Company and the Vidor Broadcasting Company, Inc., filed a joint request for approval of an agreement whereby the Vidor Broadcasting Company, Inc., would dismiss its application and the KWEN Broadcasting Company would reimburse Vidor for out-of-pocket expenses; that on May 14, 1963, the Commission, by its Review Board, ordered the Vidor Broadcasting Company, Inc., to publish a notice pursuant to the provisions of § 1.316(b)(2) of the Commission's rules stating its intention to withdraw its proposal and further stating, pursuant to the provisions of § 1.316(b)(4) of the rules, that other applicants desiring to seek substantially the same facilities specified in the Vidor application may file applications within the time specified in said Section; that Vidor has complied with the Order of May 14, 1962, and has filed proof of such compliance;² that on July 3, 1963, the Woodland Broadcasting Company filed its application which is mutually exclusive with the KWEN proposal and is therefore entitled to be consolidated in the hearing proceeding on the KWEN application; and

It further appearing, that, except as indicated by the issues specified below, each of the applicants is legally, technically, financially and otherwise qualified to construct and operate the proposed stations; and

It further appearing, that, by letter of July 18, 1963, J. G. Rountree, consulting engineer of Austin, Texas, who prepared the engineering portion of the application of the Vidor Broadcasting Company, Inc., alleged that Gerald R. Proctor, president and principal stockholder of the Woodland Broadcasting Company, has plagiarized certain exhibits prepared by Rountree for the Vidor application and used said exhibits in support of the Woodland application, and challenges the accuracy of certain exhibits; that Woodland has not denied the allegations of Rountree; that therefore, an issue will be included to permit a determination in the hearing ordered below of the manner in which the application of the

¹ Consolidated in the same proceeding was the application of Radio Orange (Docket No. 14598, File No. BP-13739) which has since been dismissed.

² The application of the Vidor Broadcasting Co., Inc., was dismissed by the Commission's Review Board on Aug. 29, 1963.

Woodland Broadcasting Company was prepared, whether information and exhibits therein are accurate, and whether the method employed in the preparation of the application reflects adversely on the qualifications of the Woodland Broadcasting Company or any of its principals; and

It further appearing, that the Commission's Order of April 12, 1962, required the applicants to accept interference from other pending applications involving mutual interference problems, that since that date certain of said other applications have been granted and one has been dismissed, but that there is still pending the application of Higson-Frank Enterprises, File No. BP-13809, for a construction permit for a new standard broadcast station at Houston, Texas which involves some mutual interference with the above-captioned applications and, therefore, a grant of either application will be appropriately conditioned; and

It further appearing, that, on August 26, 1963, the Woodland Broadcasting Company filed proof, in the form of a publisher's affidavit, of the publication of notice of filing of its application required by § 1.359 of the Commission's rules together with a petition requesting acceptance of its notice of publication or, in the alternative, a waiver of the provisions of § 1.359 of the rules to the extent necessary to permit acceptance of the notice; that, in support of its petition, Woodland states that, through no fault of its own, the newspaper in which the notice appeared failed to publish the notice within the three-week period following the filing of the application as required by § 1.359(c)(1) and did not furnish a copy of the notice in time for submission to the Commission within the time prescribed by § 1.359(h) of the rules; and

It further appearing, that, in view of the fact that strict compliance of the provisions of § 1.359 were not observed through no fault of the applicant and that the failure to publish the notice of filing and to advise the Commission of the publication within the times prescribed did not delay consideration of the application of the Woodland Broadcasting Company, the Commission will waive the provisions of §§ 1.359 (c) (1) and (h) to the extent necessary to permit acceptance of the notice filed by the Woodland Broadcasting Company on August 26, 1963; and

It further appearing, that, in view of the foregoing, the Commission is unable to make statutory finding that a grant of either of the applications would serve the public interest, convenience and necessity, and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues set forth below;

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the application of the Woodland Broadcasting Company is designated for hearing in a consolidated proceeding, with the application of Felix Joint and James Joynt d/b as KWEN Broadcasting Company, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the proposed operations and the availability of other primary service to such areas and populations.

2. To determine whether a grant of the instant proposal of KWEN Broadcasting Company would be in contravention of § 3.35(a) of the Commission's rules with respect to multiple ownership of standard broadcast stations.

3. To determine the manner in which the application of the Woodland Broadcasting Company was prepared, whether information and exhibits therein are accurate and whether the method employed in the preparation of the application reflects adversely on the qualifications of the Woodland Broadcasting Company or any of its principals.

4. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice between the instant application should not be made solely on considerations relating to section 307(b), which of the operations proposed in the above-captioned proceeding would better serve the public interest in the light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant differences between the applicants as to:

(a) The background and experience of each having a bearing on the applicant's ability to own and operate the proposed station;

(b) The proposals of each of the instant applicants with respect to the management and operation of the proposed station;

(c) The programing service proposed in each of the instant applications.

6. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

It is further ordered, That the petition of Woodland Broadcasting Company filed on August 26, 1963, is granted insofar as it requests a waiver of the provisions of § 1.359(c)(1) and (h) of the Commission's rules to the extent necessary to permit acceptance of its notice of publication, that said notice is hereby accepted, and that Woodland's petition is denied in all other respects.

It is further ordered, That, in the event of a grant of either application herein, the permittee shall accept any interference resulting from a subsequent grant of the application of Higson-Frank Radio Enterprises (BP-13809).

It is further ordered, That, in the event of a grant of the application of KWEN Broadcasting Company, permittee shall submit a complete proof of performance to show that an effective field strength at one mile of approximately 180 mv/m/k has been achieved.

It is further ordered, That a grant of either proposal in this proceeding prior to a final decision in Docket No. 14419 will be conditioned as follows: Pending a final decision in Docket No. 14419 with

respect to pre-sunrise operation with daytime facilities, the present provisions of § 3.87 of the Commission's rules are not extended to this authorization, and such operation is precluded.

It is further ordered, That, to avail itself of the opportunity to be heard, Woodland Broadcasting Company shall, pursuant to § 1.140 of the Commission's rules, by attorney or appropriate corporate officer, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

It is further ordered, That the Woodland Broadcasting Company shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.362(b) of the Commission's rules, give notice of the hearing, within the time and in the manner prescribed in such rule and shall advise the Commission of the publication of such notice as required by § 1.362(g) of the rules.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

It is further ordered, That this Order shall supersede all previous Orders herein with respect to the issues and conditions only.

Released: October 29, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-11740; Filed, Nov. 5, 1963;
8:47 a.m.]

[Docket No. 15132; FCC 63M-1200]

S & S BROADCASTING CO. (WTAQ)

Order Continuing Hearing

In re application of S & S Broadcasting Co. (WTAQ), La Grange, Illinois, Docket No. 15132, File No. BMP-10158; for construction permit.

The Hearing Examiner has before him a pleading entitled, "Request for Extension of Procedural Schedule," filed by Cream City Broadcasting Company, Inc., on October 29, 1963; and

It appearing that the other parties to the proceeding have no objection to grant of the requested extensions and to immediate consideration of the pleading;

It is ordered, This 30th day of October 1963, that the Request for Extension of Procedural Schedule is granted; and the procedural schedule is changed as follows:

Final exchange of engineering rebuttal continued from October 28, 1963, to November 7, 1963;

Notification of witnesses continued from November 1, 1963, to November 12, 1963;

Hearing date continued from November 6, 1963, to November 15, 1963.

Released: October 30, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-11741; Filed, Nov. 5, 1963;
8:47 a.m.]

WHDH, INC. (WHDH-TV) ET AL.

Order Scheduling Hearing

In re applications of WHDH, Inc. (WHDH-TV), Boston, Massachusetts, Docket No. 15204, File No. BRCT-530; for renewal of license; Charles River Civic Television, Inc., Boston, Massachusetts, Docket No. 15205, File No. BPCT-3164; Boston Broadcasters, Inc., Boston, Massachusetts, Docket No. 15206, File No. BPCT-3170; Greater Boston TV Co., Inc., Boston, Massachusetts, Docket No. 15207, File No. BPCT-3171; for construction permits for new VHF television broadcast stations.

It is ordered, This 25th day of October 1963, that David I. Kraushaar will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence at 10:00 a.m., December 16, 1963, in Washington, D.C.; that the initial prehearing conference in the proceeding will be convened by the presiding officer at 10:00 a.m., November 21, 1963, in Washington, D.C.; and that counsel for all parties to the proceeding, at the time of their appearance at this conference, will be prepared to discuss to the fullest extent applicable, in the light of the governing issues, all the pertinent points enumerated in § 1.111 of the Commission's rules of practice and procedure.

Released: October 30, 1963.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-11742; Filed, Nov. 5, 1963;
8:47 a.m.]

FEDERAL POWER COMMISSION

[Docket No. RP64-6]

ARKANSAS LOUISIANA GAS CO.

Order Suspending Proposed Revised Tariff Sheet and Providing for Hear- ing

OCTOBER 30, 1963.

On September 23, 1963, Arkansas Louisiana Gas Company (Ark-La) tendered for filing Sixth Revised Sheet No. 60 to its FPC Gas Tariff, Original Volume No. 2, proposing to increase its rate for the sale of natural gas to Southwest Gas Producing Company, Inc. (Southwest). The proposed increase amounts to approximately \$15,000 per annum, based on estimated sales for the year ending October 31, 1964.

In support of the proposed increase, Ark-La states that the contract between

it and Southwest provides that in the event that Southwest should increase its rates for this gas, which Southwest buys from Ark-La and sells to Texas Eastern Transmission Corporation (Texas Eastern), Ark-La shall be entitled to raise its rates to Southwest.

On September 30, 1963, Southwest tendered for filing new rate schedules designated FPC Gas Rate Schedules Nos. 5 and 6, which provide for increased rates at which Southwest will sell gas, including the Ark-La gas, to Texas Eastern. Southwest requested an effective date of November 1, 1963; Ark-La requests that its proposed rate be made effective simultaneously with that of Southwest.

By separate order issued this day, the Commission has suspended the use of Southwest's newly proposed rate schedule for 5 months, from November 1, 1963 until April 1, 1964. Since Ark-La's proposed change of rate admittedly depends on the effectiveness of Southwest's proposed change, it is appropriate that we suspend Ark-La's new rates for the period November 1, 1963 to April 1, 1964.

The increased rates and charges contained in the above-designated revised tariff sheet tendered for filing on September 23, 1963, have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a public hearing concerning the lawfulness of the rates, charges, classifications, and services contained in Ark-La's FPC Gas Tariff, Original Volume No. 2, as proposed to be amended by the revised tariff sheet tendered for filing on September 23, 1963, and that said revised tariff sheet and the rates contained therein be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act, (18 CFR Ch. I) a public hearing shall be held, upon date to be fixed by notice from the Secretary, concerning the lawfulness of the rates, charges, classifications, and services contained in Ark-La's FPC Gas Tariff, Original Volume No. 2, as proposed to be amended by the aforementioned revised tariff sheet tendered for filing on September 23, 1963.

(B) Pending hearing and decision thereon, Sixth Revised Sheet No. 60 to Ark-La's FPC Gas Tariff, Original Volume 2, is hereby suspended and the use thereof deferred until April 1, 1964, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

By the Commission.

[SEAL] GORDON M. GRANT,
Acting Secretary.

[F.R. Doc. 63-11715; Filed, Nov. 5, 1963;
8:46 a.m.]

[Docket No. RI60-299]

ASHLAND OIL & REFINING CO. ET AL.

Order Making Successor in Interest Co-respondent, Redesignating Pro- ceeding, and Requiring Successor To File Agreement and Undertaking

OCTOBER 30, 1963.

Ashland Oil & Refining Company and Yucca Petroleum Company (Operator), et al.; Docket No. RI60-229.

On July 11, 1963, Yucca Petroleum Company (Operator), et al. (Yucca) acquired by assignment certain acreage from Ashland Oil & Refining Company (Ashland), dedicated under Ashland's contract with Panhandle Eastern Pipe Line Company (Panhandle), for the jurisdictional sale of natural gas in Cimarron County, Oklahoma (Oklahoma Panhandle Area). Ashland's FPC Gas Rate Schedule No. 120 comprises Ashland's contract with Panhandle. The last rate in effect not subject to refund under Ashland's FPC Gas Rate Schedule No. 120 is 15.0 cents per Mcf at 14.65 psia, plus Btu adjustment, the initial rate permanently certificated in Docket No. G-4328. The presently effective rate under Ashland's rate schedule is 16.0 cents per Mcf, plus Btu adjustment, subject to refund in the proceeding in Docket No. RI60-229.

By letter order issued October 11, 1963, in Docket No. CI64-215, Yucca was granted temporary authorization, inter alia, to sell gas to Panhandle from the above-mentioned acreage under Yucca's FPC Gas Rate Schedule No. 10.¹ With respect to such acreage, the order granting Yucca temporary authorization provides that the price for such sale shall be 16.0 cents per Mcf at 14.65 psia, plus Btu adjustment, subject to Yucca refunding to Panhandle any amounts collected, plus interest at 7 percent per annum, in excess of 15.0 cents per Mcf plus Btu adjustment, that are not determined to be just and reasonable in the proceeding in Docket No. RI60-229. It was also indicated there that by separate order Yucca would be made a co-respondent in Docket No. RI60-229.

The Commission finds: It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder, that Yucca be joined as co-respondent with Ashland in the rate suspension proceeding in Docket No. RI60-229, that such proceeding be redesignated accordingly, and that Yucca be required to file an agreement and undertaking in Docket No. RI60-229.

The Commission orders:

(A) Yucca Petroleum Company (Operator), et al., is hereby joined as co-respondent with Ashland Oil & Refining Company, and such proceeding is hereby redesignated as "Ashland Oil & Refining Company and Yucca Petroleum Company (Operator), et al."

(B) Within 30 days from the date of issuance of this order, Yucca Petroleum

¹ By that letter order, Yucca was also granted temporary authorization to sell gas to Panhandle from previously undedicated acreage, which is not involved in this order.

Company (Operator), et al., shall execute, in the form set out below, and shall file with the Secretary of the Commission, an acceptable agreement and undertaking in Docket No. RI60-229 to assure refund of any excess charges which the Commission may require in accordance with the provisions of the temporary authorization granted in Docket No. CI64-215 by letter order issued October 11, 1963, as set forth above. Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of submission, such agreement and undertaking shall be deemed to be satisfactory and to have been accepted for filing.

(C) Yucca Petroleum Company (Operator), et al., shall comply with the refunding and reporting procedure required by the Natural Gas Act and Section 154.102 of the Regulations thereunder, and its agreement and undertaking filed in Docket No. RI60-229 shall remain in full force and effect until discharged by the Commission.

By the Commission.

[SEAL] GORDON M. GRANT,
Acting Secretary.

[F.R. Doc. 63-11716; Filed, Nov. 5, 1963;
8:46 a.m.]

[Docket No. RI63-427]

KERR-McGEE OIL INDUSTRIES, INC.

Order Amending Order for Hearings on and Suspension of Proposed Changes in Rates

OCTOBER 30, 1963.

On May 1, 1963, Kerr-McGee Oil Industries, Inc. (Kerr-McGee), filed with the Commission a proposed change in

rate which was designated as Supplement No. 2 to Kerr-McGee's FPC Gas Rate Schedule No. 58 and pertains to sales of natural gas to Panhandle Eastern Pipe Line Company (Panhandle) from the South Forgan Area, Beaver County, Oklahoma. Kerr-McGee requested an effective date of June 1, 1963, for its proposed rate filing. The Commission by order issued May 22, 1963,¹ suspended Kerr-McGee's proposed rate increase and deferred the use thereof until November 1, 1963, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

By letter dated October 7, 1963, Kerr-McGee informed the Commission that Panhandle in a letter to Kerr-McGee on May 23, 1963, protested Kerr-McGee's citation in the notice of change of the June 1, 1963, effective date for the price increase and set out therein Panhandle's reasons underlying its theory that such effective date is December 1, 1963. Kerr-McGee advises that it continues to believe that its view is correct; however, because of the relatively small amount of money involved and so as to avoid continuation of dissension in the matter, Kerr-McGee desires to change the requested effective date of its rate filing to December 1, 1963.

In view of the foregoing, we believe that Kerr-McGee's request that the effective date for its proposed increased rate be changed from June 1, 1963 to December 1, 1963, should be granted. In accordance with the requested change in effective date, we shall also change the suspension period applicable thereto, as hereinafter provided.

The Commission finds: Good cause exists for amending the suspension order issued May 22, 1963, to the extent hereinafter provided.

The Commission orders:

(A) That the order providing for hearings on and suspension of proposed changes in rates issued May 22, 1963, with respect to the proceeding entitled Kerr-McGee Oil Industries, Inc., Docket No. RI63-427, is hereby amended by changing the proposed effective date of Kerr-McGee's increased rate from June 1, 1963 to December 1, 1963, and by changing the termination date of the suspension period from November 1, 1963 to May 1, 1964, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) In all other respects, the order issued by the Commission on May 22, 1963, shall remain unchanged and in full force and effect.

By the Commission.

[SEAL] GORDON M. GRANT,
Acting Secretary.

[F.R. Doc. 63-11718; Filed, Nov. 5, 1963;
8:46 a.m.]

[Docket No. RI64-242]

SHELL OIL CO.

Order Permitting Rate Filing, Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund

OCTOBER 30, 1963.

On September 30, 1963, Shell Oil Company (Shell)¹ tendered for filing proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following described filings:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI64-242	Shell Oil Co.	251	3	Transwestern Pipeline Co. (Bell Lake Field, Lea County, N. Mex.) (Permian Basin Area).	144	9-30-63	10-31-63	11-1-63	\$ 16.0770	\$ 16.3570	RI64-141
	do.	184	8	El Paso Natural Gas Co. (Bisti Field, San Juan County, N. Mex.) San Juan Basin Area).	2,325	9-30-63	10-31-63	11-1-63	\$ 13.0536	\$ 13.2486	RI64-141
	do.	253	3	El Paso Natural Gas Co. (James Ranch (Los Medanos) Field, Eddy County, N. Mex.) (Permian Basin Area).	558	9-30-63	10-31-63	11-1-63	\$ 15.6238	\$ 15.8563	RI64-141

¹ The stated effective date is the date requested by respondent.

² Tax reimbursement increase.

³ Includes 0.0770 cent per Mcf tax reimbursement (0.55% increase in New Mexico emergency school tax).

⁴ Reflects partial reimbursement for remaining 2.0% of full 2.55% New Mexico emergency school tax.

⁵ Pressure base is 14.65 psia.

⁶ Pressure base is 15.025 psia.

⁷ Includes 0.0636 cent per Mcf tax reimbursement (0.55% increase in New Mexico emergency school tax).

⁸ Includes 0.1238 cent per Mcf tax reimbursement (0.55% increase in New Mexico emergency school tax plus 0.015% increase in conservation tax plus 0.5% increase in severance tax).

⁹ The suspension period is limited to 1 day.

Shell's proposed rate increases reflect partial reimbursement for the New Mexico Oil and Gas Emergency School Tax which was increased from 2.0 percent to 2.55 percent on April 1, 1963. Shell has previously filed for partial reimbursement of the 0.55 percent increases and now proposes partial reimbursement for the remaining 2.0 percent of the tax. El Paso Natural Gas Company (El Paso) is the purchaser of the gas under Supplements Nos. 8 and 3 to Shell's FPC Gas Rate Schedules Nos.

184 and 253, respectively, and has protested the rate increases filed by Shell. El Paso questions the right of Shell under its tax reimbursement clause to file a rate increase reflecting tax reimbursement computed on the basis of an increase in tax rate by the New Mexico Legislature in excess of 0.55 percent. While El Paso concedes that the New Mexico tax legislation effected a higher

¹ Lead docket entitled, Cities Service Oil Co., et al., Docket Nos. RI63-426, et al.

tax rate of at least 0.55 percent, El Paso claims that there is controversy as to whether or not the new legislation effected an increased tax rate in excess of 0.55 percent. Under the circumstances, we shall provide that the hearing provided for herein shall concern itself with the contractual basis as well as the statutory lawfulness of Shell's rate filings which El Paso has protested. Since

¹ Address is: 50 West 50th Street, New York 20, N.Y.

Shell's proposed rate increases reflect only tax reimbursement, the suspension period for each may be shortened to one day from the date of expiration of the 30-days statutory notice.

With respect to Supplement No. 3 to Shell's FPC Gas Rate Schedule No. 251, Shell is currently selling gas under a temporary certificate in Docket No. CI61-1491 conditioned to a total initial rate of 16.0 cents per Mcf, subject to refund down to 14.5 cents per Mcf of any amounts collected in excess of the rate ultimately found to be required. Shell's temporary certificate contains Condition (2) which provides that the conditioned rates shall remain in effect until changed by Commission order. Inasmuch as increased tax reimbursement constitutes a known increased cost to Shell, and in view of the fact that Condition (2) was previously waived to allow Shell to file for the 0.55 percent tax increase, we believe that Condition (2) contained in the temporary certificate should also be waived with respect to the subject increase, and that such notice of change containing partial reimbursement for the remaining 2.0 percent of the New Mexico Oil and Gas Emergency School Tax should be permitted to be filed: *Provided, however*, That should there be a tax reduction or should this tax be held invalid for any reason, Shell shall file for a rate reduction commensurate with the reduction in taxes.

Shell's proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR Ch. I, Part 2, § 2.56).

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) Good cause exists for waiving Condition (2) in the temporary certificate issued in Docket No. CI61-1491 with respect to Shell's notice of change in rate, designated as Supplement No. 3 to Shell's FPC Gas Rate Schedule No. 251, and that such notice of change be permitted to be filed as hereinafter ordered.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the contractual basis of Shell's proposed rate changes contained in Supplements Nos. 8 and 3 to Shell's FPC Gas Rate Schedules Nos. 184 and 253, respectively, and the statutory lawfulness of all of Shell's proposed rate changes, and that the above-designated rate supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Condition (2) in the temporary certificate issued in Docket No. CI61-1491 is hereby waived with respect to Shell's notice of change, designated as Supplement No. 3 to Shell's FPC Gas Rate Schedule No. 251, and such rate change is hereby permitted to be filed.

(B) Should there be a tax reduction or should the subject tax be held invalid

for any reason, Shell shall file for a rate reduction commensurate with the reduction in taxes.

(C) The refunding provision contained in Condition (1) in the temporary certificate issued to Shell in Docket No. CI61-1491 shall remain in full force and effect and shall also be effective as to the rate filing herein.

(D) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the contractual basis of Shell's proposed rate filings which El Paso has protested, and the statutory lawfulness of all of Shell's proposed increased rates and charges contained in the above-designated rate supplements.

(E) Pending a hearing and decision thereon, the above-designated rate supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Date Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act: *Provided, however*, That the supplements to the rate schedules filed by Shell, as set forth above, shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Shell shall execute and file under Docket No. RI64-242 with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedules involved. Unless Shell is advised to the contrary within 15 days after the filing of its agreement and undertaking, such agreement and undertaking shall be deemed to have been accepted.

(F) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(G) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before December 16, 1963.

By the Commission.

[SEAL] GORDON M. GRANT,
Acting Secretary.

[F.R. Doc. 63-11720; Filed, Nov. 5, 1963; 8:46 a.m.]

[Docket No. RI62-526]

V. F. NEUHAUS ET AL.

Order Redesignating Proceeding

OCTOBER 30, 1963.

V.F. Neuhaus (operator), et al. (formerly V. H. Neuhaus); Docket No. RI62-526.

V. H. Neuhaus (Neuhaus) filed a petition to amend its certificate issued in Docket No. G-18862 to include a 50 percent working interest of Shell Oil Company (Shell) in certain properties dedicated to a contract on file as Neuhaus' FPC Gas Rate Schedule No. 5.

On August 6, 1963, an order was issued by the Commission amending the certificate issued in Docket No. G-18862 to include the interest of Shell Oil Company and redesignating said certificate as "V. F. Neuhaus (operator), et al."

The current effective rate under Neuhaus' FPC Gas Rate Schedule No. 5 is 17 cents per Mcf at 14.65 psia, subject to refund in Docket No. RI62-526, by Commission order issued June 29, 1962. Any monies collected on Shell's behalf are subject to refund in Docket No. RI62-526 as provided in the August 6, 1963, order. The surety bond filed by Neuhaus to assure refund of any excess charges determined in Docket No. RI62-526 is also deemed to cover Shell's interest herein.

The Commission finds: Good cause has been shown for redesignating the rate proceeding as hereinabove captioned.

The Commission orders: The proceeding in Docket No. RI62-526 is hereby designated as "V. F. Neuhaus (operator), et al."

By the Commission.

[SEAL] GORDON M. GRANT,
Acting Secretary.

[F.R. Doc. 63-11719; Filed, Nov. 5, 1963; 8:46 a.m.]

TARIFF COMMISSION

STAINLESS-STEEL TABLE FLATWARE

Report to the President

NOVEMBER 1, 1963.

The U.S. Tariff Commission today submitted to the President a report, under section 351(d)(1) of the Trade Expansion Act of 1962, on developments in the trade in stainless-steel table flatware. Following an escape-clause investigation by the Tariff Commission under section 7 of the Trade Agreements Extension Act of 1951, the President, by proclamation dated October 20, 1959, increased the rates of duty applicable to certain stainless-steel table flatware imported in excess of 69 million single units in any 12-month period beginning November 1 of each year starting with 1959. Section 351(d)(1) of the Trade Expansion Act provides that—

So long as any increase in, or imposition of, any duty or other import restriction pursuant to this section or pursuant to section 7 of the Trade Agreements Extension Act of 1951 remains in effect, the Tariff Commission shall keep under review developments with respect to the industry concerned, and shall make annual reports to the President concerning such developments.

The report to the President presents statistical data and other information with respect to stainless-steel table flatware, with emphasis on developments that have occurred since those described in the Commission's report in November 1962 under Executive Order 10401 and section 351(d)(1).

Copies of the Commission's report (the release of which was authorized by the President) are available upon request as long as the limited supply lasts. Requests should be addressed to the Secretary, U.S. Tariff Commission, 8th and E Sts. NW., Washington, D.C., 20436.

By direction of the Commission.

DONN N. BENT,
Secretary.

[F.R. Doc. 63-11705; Filed, Nov. 5, 1963;
8:45 a.m.]

DEPARTMENT OF LABOR

Bureau of Employment Security
FLORIDA

Wages for Foreign Agricultural Labor

Under the authority of section 204(c) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1154(c)), the United States Attorney General in passing upon an employer's request to import or retain foreign labor for temporary employment, requires a certification from the United States Employment Service that Employment Service policies have been observed. These policies include the requirement that, "Employment of such labor will not adversely affect the wages or working conditions of domestic workers similarly employed in the area" (20 CFR 602.10 (2)).

On July 1, 1963, the Employment Service made a determination that wage offers of at least \$0.95 per hour for agricultural workers in Florida would be necessary in order to avoid the prescribed "adverse affect" of 20 CFR 602.10(2). Based upon additional information, it has been decided that the July 1, 1963, determination pertaining to Florida should be held in abeyance pending a further opportunity for the presentation of data, views, and argument regarding the determination.

On October 23, 1963, a notice was published in the FEDERAL REGISTER (28 F.R. 11328) inviting interested parties to participate by presenting data and argument, orally and in writing, on November 5, 1963, at 9:00 a.m. in the Gulf Stream Room of the Bay Front Park Auditorium, Biscayne Boulevard, Miami, Florida. This notice is to provide an alternative time and place for any interested party to present data and argument, orally and in writing, with respect to the July 1 determination, or to suggest any different method for determining the wage rate which must be paid to alien agricultural workers in order to avoid adversely affecting the wages of domestic agricultural workers. Such expressions will be received by Clifford P. Grant, a hearing examiner appointed under section 11 of the Administrative Procedure Act (5 U.S.C. 211), on November 19, 1963, at 9:00 a.m., in Conference Room A of the Departmental Auditorium, Constitution Avenue between 12th and 14th Streets NW., Washington, D.C. The proceedings will be conducted in ac-

cordance with the direction of the hearing examiner. After consideration of all available information, the hearing examiner will make his recommendation and certify the record of proceedings to the Administrator of the Bureau of Employment Security for his decision.

Signed at Washington, D.C., this 31st day of October 1963.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 63-11713; Filed, Nov. 5, 1963;
8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 1, 1963.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 38625: *Brick and related articles from Rapid City, S.Dak.* Filed by Western Trunk Line Committee, agent (No. A-2333), for interested rail carriers. Rates on brick and related articles, in carloads, from Rapid City, S. Dak., to points in western truckline territory.

Grounds for relief: Market competition.

Tariff: Supplement 35 to Western Trunk Line Committee, agent, tariff I.C.C. A-4475.

FSA No. 38626: *Liquefied chlorine gas from Vicksburg, Miss.* Filed by O. W. South, Jr., agent (No. A4392), for interested rail carriers. Rates on liquefied chlorine gas, in tank car loads, from Vicksburg, Miss., to Chattanooga, Tenn.

Grounds for relief: Market competition.

Tariff: Supplement 115 to Southern Freight Association, agent, tariff I.C.C. S-89.

FSA No. 38627: *Lumber and related Articles from Vicksburg, Miss., et al.* Filed by Illinois Freight Association agent (No. 214), for interested rail carriers. Rates on lumber and related articles, in carloads, from Vicksburg, Miss., Baton Rouge, New Orleans, and Reserve, La., on the IC railroad, to points in Illinois and Indiana on the EJ&E, also Chicago, Ill., on the WAB railroad.

Grounds for relief: Motor truck competition, short-line distance formula, and grouping.

Tariff: Supplement 21 to Illinois Freight Association, agent, tariff I.C.C. 1018.

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 63-11721; Filed, Nov. 5, 1963;
8:46 a.m.]

[Drouth Order No. 63; Amdt. 7]

PENNSYLVANIA

Drouth Order; Reduced Rates on Transportation of Hay and Live- stock Feed

In the Matter of Relief under section 22 of the Interstate Commerce Act.

It appearing, that due to the drouth conditions existing in the State of Mississippi the Commission issued its Drouth Order No. 63 under section 22 of the Interstate Commerce Act authorizing the railroads subject to the Commission's jurisdiction to transport hay and livestock feed to the disaster area at a reduced rates;

And it further appearing, that the United States Department of Agriculture has requested the Commission to enter an order extending such authority to include 29 counties in the State of Pennsylvania.

It is ordered, That Drouth Order No. 63, as amended, be, and it is hereby, further amended to provide that the authority therein granted to establish reduced rates on hay and livestock feed shall also apply, subject to the same terms and conditions, to establish and maintain reduced rates on such commodities to destinations in the counties named below, viz.:

Pennsylvania, 29 counties, viz.:

Adams	Huntingdon
Allegheny	Indiana
Bedford	Juniata
Berks	Lebanon
Blair	Lehigh
Butler	Luzerne
Cambria	Mercer
Clinton	Mifflin
Crawford	Montgomery
Cumberland	Perry
Dauphin	Somerset
Fayette	Washington
Franklin	Westmoreland
Fulton	York
Greene	

It is further ordered, That in all other respects Drouth Order No. 63, as amended shall remain in full force and effect.

And it is further ordered, That notice to the affected railroads and the general public shall be given by depositing a copy of this order in the Office of the Secretary of the Commission and by filing a copy with the Director, Office of the Federal Register; and that copies be mailed to the Chairman of the Traffic Executive Association-Eastern Railroads, New York, N.Y., the Chairman of the Southern Freight Association, Atlanta, Georgia, the Chairman of the Executive Committee, Western Railroad Traffic Association, Chicago, Illinois, the Traffic Vice-President of the Association of American Railroads, Washington, D.C., and to the President of the American Short Line Railroad Association, Washington, D.C.

Dated at Washington, D.C., this 31st day of October 1963.

By the Commission, Vice Chairman
Goff.

[SEAL]

HAROLD D. McCoy,
Secretary.

[F.R. Doc. 63-11722; Filed, Nov. 5, 1963;
8:46 a.m.]

[Notice No. 278]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

NOVEMBER 1, 1963.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission, under the Commission's Deviation Rules Revised, 1957 (49 CFR 211.1 (c) (8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d) (4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Deviation Rules Revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 11220 (Deviation No. 9), GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis 2, Tenn., filed October 21, 1963. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From junction U.S. Highway 70 and Interstate Highway 55 approximately 3 miles west of Memphis, Tenn., over Interstate Highway 55 to junction U.S. Highway 64, thence over U.S. Highway 64 to junction U.S. Highway 67, at or near Bald Knob, Ark., thence over U.S. Highways 64 and 67 to junction such highways near Beebe, Ark., thence over U.S. Highway 64 to Conway, Ark., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Memphis over U.S. Highway 70 to Little Rock, Ark., thence over U.S. Highway 65 to Conway, and return over the same route.

No. MC 29988 (Deviation No. 12), DENVER CHICAGO TRUCKING COMPANY, INC., 45th and Jackson Streets, Denver, Colo., applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill., filed October 25, 1963. Applicant proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Albany, N.Y. over Interstate Highway 90 to Boston, Mass., and return over the same route for operating convenience only. The notice indicates that the car-

rier is presently authorized to transport the same commodities over a pertinent service route as follows: From Albany over U.S. Highway 20 to Boston, and thence over U.S. Highway 1 to New York, N.Y., and return over the same route.

No. MC 59918 (Deviation No. 1) CLINTON TRUCKING CO., Clinton, Mass., filed October 24, 1963. Attorney Kenneth B. Williams, 111 State Street, Boston 9, Mass. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (A) from junction U.S. Highway 20 and Massachusetts Highway 15, near Sturbridge, Mass., over Massachusetts Highway 15 to the Massachusetts-Connecticut State line, thence over Connecticut Highway 15 to junction U.S. Highway 5, near Hartford, Conn.; (B) from junction Massachusetts Highway 12 and the Massachusetts Turnpike in Auburn, Mass., over the Massachusetts Turnpike and access routes to Springfield, Mass.; (C) from Springfield, Mass., over Interstate Highway 91 to Hartford, Conn.; and (D) from New Haven, Conn., over the Connecticut Turnpike and access routes to the New York-Connecticut State line, thence over the New England Thruway and access routes to New York, N.Y., and return over the same routes. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Clinton over Massachusetts Highway 110 to Worcester, Mass., thence over Massachusetts Highway 12 to junction U.S. Highway 20, thence over U.S. Highway 20 to Springfield, Mass., thence over U.S. Highway 5 to junction Alternate U.S. Highway 5, thence over Alternate U.S. Highway 5 via Meriden and Tracy, Conn., to junction U.S. Highway 5, south of Tracy, thence over U.S. Highway 5 to North Haven, Conn., thence over Alternate U.S. Highway 5 via Montowese, Conn., to New Haven, thence over U.S. Highway 1 to Newark, N.J.; and from Clinton over Massachusetts Highway 70 to Worcester, thence over Massachusetts Highway 9 to West Brookfield, Mass., thence over Massachusetts Highway 19 to Warren, Mass., thence over Massachusetts Highway 67 via West Warren, to junction U.S. Highway 20, thence over U.S. Highway 20 to Springfield, thence over Alternate U.S. Highway 5 to Hartford, and thence to Newark as specified above, and return over the same routes.

No. MC 108158 (Sub-No. 29) (Deviation No. 6), MID-CONTINENT FREIGHT LINES, INC., 11 Oak Street, SE., Minneapolis, Minn., filed October 25, 1963. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (A) from El Dorado, Kans., over U.S. Highway 77 to junction Interstate Highway 80, at or near Lincoln, Nebr., thence over Interstate Highway 80 to Omaha, Nebr., thence over U.S. Highway 75 to Sioux City, Iowa, thence over U.S. Highway 75 to junction Iowa Highway 33, thence over Iowa Highway 33 to the Iowa-Minnesota State line, thence over Minnesota Highway 60 to junction U.S. Highway 169 at or near Mankato, Minn.,

thence over U.S. Highway 169 to Minneapolis-St. Paul, Minn.; and (B) from Independence, Kans., over U.S. Highway 75 to Omaha, Nebr., thence over alternate U.S. Highway 30 to junction U.S. Highway 30 at or near Missouri Valley, Iowa, thence over U.S. Highway 30 to junction Iowa Highway 4, thence over Iowa Highway 4 to junction Iowa Highway 175, thence over Iowa Highway 175 to junction U.S. Highway 71, thence over U.S. Highway 71 to junction Iowa Highway 9 at or near Spirit Lake, Iowa, thence over Iowa Highway 9 to junction U.S. Highway 169, thence over U.S. Highway 169 to Minneapolis, St. Paul, Minn., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: From Tulsa, Okla., over U.S. Highway 75 to Independence, Kans., thence over U.S. Highway 160 to junction U.S. Highway 169, thence over U.S. Highway 169 to junction U.S. Highway 50, thence over U.S. Highway 50 to Kansas City; and from Kansas City over U.S. Highway 69 to junction U.S. Highway 65 near Albert Lea, Minn., and thence over U.S. Highway 65 to Minneapolis; and from Oklahoma City, Okla., over U.S. Highway 77 to junction U.S. Highway 35, and thence over U.S. Highway 35 to Kansas City, and thence as specified above to Minneapolis, and return over the same routes.

MOTOR CARRIERS OF PASSENGERS

No. MC 1501 (Deviation No. 139) (cancelling Deviation Nos. 9 and 20), THE GREYHOUND CORPORATION (Central Greyhound Lines Division), 1740 Main Street, Kansas City, Mo., filed October 21, 1963. Applicant proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, over a deviation route as follows: From Chicago, Ill., over Interstate Highway 90 to junction U.S. Toll Highway 30, thence over U.S. Toll Highway 30 to junction Illinois Highway 55 near Aurora, Ill., thence over Illinois Highway 55 to junction with U.S. Highway 30, thence over U.S. Highway 30 to junction Illinois Highway 2, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers over a pertinent service route as follows: From Chicago over Alternate U.S. Highway 30 to junction Illinois Highway 31, thence over Illinois Highway 31 to junction Illinois Highway 64, thence over Illinois Highway 64 to Sycamore, Ill., thence over Illinois Highway 23 to De Kalb, Ill., thence over Alternate U.S. Highway 30 to junction U.S. Highway 30, thence over U.S. Highway 30 to junction Illinois Highway 2, and return over the same route.

No. MC 1501 (Deviation No. 140), THE GREYHOUND CORPORATION (Central Greyhound Lines Division), 1740 Main Street, Kansas City, Mo., filed October 21, 1963. Applicant proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, over a deviation route as follows: From Denver, Colo., over U.S. Highway 85 to Brighton, Colo., and return over the same route for operating convenience

only. The notice indicates that the carrier is presently authorized to transport passengers over a pertinent service route as follows: From Denver over Adams County Highway 31 (formerly U.S. Highway 85) to Brighton, and return over the same route.

No. MC 1940 (Deviation No. 11), TRAILWAYS OF NEW ENGLAND, INC., 400 Trailways Building, 1200 Eye Street, Washington 5, D.C., filed October 23, 1963. Attorney Charles B. McInnis, 1012 14th Street NW., Washington, D.C., 20005. Carrier proposes to operate as a common carrier, by motor vehicle, of passengers and their baggage, and express and newspapers, over a deviation route as follows: Between Boston, Mass. and Manchester, N.H., over U.S. Highway 28 and newly completed Interstate Highway 93, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers over a pertinent service route as follows: Between Boston and Manchester, over U.S. Highways 3 and 3A.

No. MC 29601 (Sub-No. 1), (Deviation No. 1), MIDWEST COACHES, INC., 216 North Second Street, Mankato, Minn., filed October 28, 1963. Applicant proposes to operate as a common carrier, by motor vehicle, of passengers and their baggage, and express, mail, and newspapers, in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 16 and Interstate Highway 90, over Interstate Highway 90 to junction Interstate Highway 229, thence over Interstate Highway 229 to junction U.S. Highway 16 in Sioux Falls, S. Dak., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers over a pertinent service route as follows: From junction U.S. Highway 16 and Interstate Highway 90 over U.S. Highway 16 to Sioux Falls, S. Dak., and return over the same route.

No. MC 107109 (Deviation No. 5), INDIANAPOLIS AND SOUTHEASTERN TRAILWAYS, INC., 1318 North Capitol Avenue, Indianapolis, Ind., filed October 25, 1963. Applicant's attorney: James E. Wilson, 716 Perpetual Building, 1111 E Street NW., Washington 4, D.C. Carrier proposes to operate as a common carrier, by motor vehicle, of passengers and their baggage, over a deviation route as follows: Between Covington, Ky., and Mt. Vernon, Ky. over U.S. Highway 25 (also to be known as Interstate Highway 75) for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers over a pertinent service route as follows: From Cincinnati, Ohio over U.S. Highway 25 to Dry Ridge, Ky., thence over Kentucky Highway 22 to junction U.S. Highway 127, thence over U.S. Highway 127 to junction U.S. Highway 150, thence over U.S. Highway 150 to Mt. Vernon, Ky., and return over the same route.

By the Commission.

[SEAL]

HAROLD D. McCoy,
Secretary.

[F.R. Doc. 63-11723; Filed, Nov. 5, 1963;
8:46 a.m.]

[Notice No. 575]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

NOVEMBER 1, 1963.

The following publications are governed by the Interstate Commerce Commission's general rules of practice including special rules (49 CFR 1.241) governing notice of filing of applications by motor carriers of property or passengers or brokers under sections 206, 209, and 211 of the Interstate Commerce Act and certain other proceedings with respect thereto.

All hearings and pre-hearing conferences will be called at 9:30 a.m., U.S. s.t. (or 9:30 a.m., l.d.s.t., if that time is observed), unless otherwise specified.

APPLICATIONS ASSIGNED FOR ORAL HEARING OR PRE-HEARING CONFERENCE

MOTOR CARRIERS OF PROPERTY

No. MC 50069 (Sub-No. 280), filed October 22, 1963. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 111 West Jackson Boulevard, Chicago 4, Ill. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Toluene di isocyanate*, in bulk, in tank vehicles, from Ashtabula, Ohio to points in Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

HEARING: December 16, 1963, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner J. Thomas Schneider.

No. MC 50069 (Sub-No. 281), filed October 25, 1963. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 111 West Jackson Boulevard, Chicago 4, Ill. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Liquid chemicals and processed oils*, from Carpentersville, Ill., to points in Florida, Georgia, Indiana, Iowa, Kansas, Michigan, Kentucky, Minnesota, Missouri, Ohio, Tennessee, Wisconsin, Colorado, Nebraska, North Dakota, South Dakota, New Mexico, Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, and Illinois.

HEARING: December 2, 1963, at the Midland Hotel, Chicago, Ill., before Examiner Richard H. Roberts.

No. MC 61403 (Sub-No. 95) (AMENDMENT), filed August 23, 1963, published in FEDERAL REGISTER issue of October 16, 1963, amended October 30, 1963 and republished as amended this issue. Applicant: THE MASON AND DIXON TANK LINES, INC., Eastman Road, Kingsport, Tenn. Applicant's attorney: W. C. Mitchell, 140 Cedar Street, New York 6, N.Y. Authority sought to operate as a common carrier, by motor vehicle over irregular routes, transporting: *Vegetable oils, vegetable oil shortenings, and vegetable oil products*, in bulk, in tank vehicles, from Columbus, Ohio to points in Kentucky, Missouri, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

NOTE: Common control may be involved. The purpose of this republication is to add the commodity *vegetable oil products* to authority sought.

HEARING: Remains as assigned December 17, 1963, at the Dinkler-Andrew Jackson Hotel, Nashville, Tenn., before Examiner Wm. N. Culbertson.

No. MC 61403 (Sub-No. 101), filed October 30, 1963. Applicant: THE MASON AND DIXON TANK LINES, INC., Eastman Road, Kingsport, Tenn. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Phthalic anhydride*, in bulk, in tank vehicles, from the plant site of Stephen Chemical Co., located at or near Millsdale, Ill., to points in the United States (except Alaska and Hawaii).

HEARING: November 19, 1963, at the Midland Hotel, Chicago, Ill., before Examiner James O'D. Moran.

No. MC 64932 (Sub-No. 329), filed September 12, 1963. Applicant: ROGERS CARTAGE CO., a corporation, 1934 South Wentworth Ave., Chicago, Ill. Applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Sodium phosphates*, dry, in bulk, from the plant site of the Monsanto Chemical Company, at or near Trenton, Mich., to Skaneateles Falls, N.Y.

HEARING: December 9, 1963, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner William J. O'Brien, Jr.

No. MC 86336 (Sub-No. 4) (AMENDMENT), filed August 13, 1963, published in FEDERAL REGISTER October 30, 1963, amended October 25, 1963, and republished as amended this issue. Applicant: DABAR HAULAGE COMPANY, INC., 170 Avenue F, Bayonne, N.J. Applicant's attorney: Edward F. Bowes, 1060 Broad Street, Newark 2, N.J. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Empty iron and steel pails and drums*, from the plant site of United States Steel Products Division, United States Steel Corporation at Pennsauken Township, Camden County, N.J., to points in Connecticut, Rhode Island, and Massachusetts, and rejected and damaged empty iron or steel pails and drums, on return.

NOTE: Applicant states that the above service is to be conducted under contract with United States Steel Products Division, United States Steel Corporation. The purpose of this republication is to enlarge the territorial description.

HEARING: Remains as assigned December 11, 1963, at the Sheraton Atlantic Hotel, New York, N.Y., before Examiner Abraham J. Essrick.

No. MC 93003 (Sub-No. 39), filed July 24, 1963. Applicant: CARROLL TRUCKING COMPANY, a corporation, 4901 U.S. Route 60, Huntington, W. Va. Applicant's attorney: James E. Wilson, Perpetual Building, 1111 E Street NW., Washington 4, D.C. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Mattress spring assemblies*, from

Huntington, W. Va., to Orlando, Fla., Tyler, Tex., Cincinnati, Youngstown, and Toledo, Ohio, Altoona, Wilkes-Barre, and Johnstown, Pa., Buffalo, N.Y., and Saginaw, Mich., and empty containers or other such incidental facilities (not specified) used in transporting the above-named commodities, on return.

HEARING: December 20, 1963, in Room 3262 Third Floor, U.S. Courthouse and Federal Office Building, 500 Quarrier Street, Charleston, W. Va., before Examiner William J. Cave.

No. MC 107107 (Sub-No. 284), filed September 12, 1963. Applicant: ALTERMAN TRANSPORT LINES, INC., Post Office Box 65, Allapattah Station, Miami 42, Fla. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Salt, pepper, mineral mixtures, and foodstuffs, other than frozen, from Weeks Island, La. to points in Florida and Georgia.

HEARING: December 9, 1963, at the Dupont Plaza Hotel, Miami, Fla., before Examiner Joseph A. Reilly.

No. MC 107496 (Sub-No. 294), filed October 9, 1963. Applicant: RUAN TRANSPORT CORPORATION, 408 SE. 30th Street, Des Moines, Iowa. Applicant's attorney: H. L. Fabritz, Post Office Box 855, Des Moines 4, Iowa. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Fertilizer, fertilizer ingredients and solutions, and anhydrous ammonia, from Fremont, Nebr. and points within 10 miles thereof, to points in South Dakota, Iowa, Kansas, and Minnesota.

HEARING: December 13, 1963, at the Hotel Sheraton Fontenelle, Omaha, Nebr., before Examiner Jair S. Kaplan.

No. MC 108341 (Sub-No. 5), filed September 19, 1963. Applicant: MOSS TRUCKING COMPANY, INC., Post Office Box 8409, Charlotte 8, N.C. Applicant's representative: Bert Collins, 140 Cedar Street, New York 6, N.Y. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Gypsum, gypsum products, and building materials, between Plasterco, Va., on the one hand, and, on the other, points in North Carolina, points in South Carolina on and west of U.S. Highway 1, points in Tennessee on and east of U.S. Highway 231, points in Kentucky on and east of a line commencing at the Kentucky-Tennessee State line and extending northward on U.S. Highway 231 to Bowling Green, Ky., thence over U.S. Highway 31W to Louisville, Ky., thence over U.S. Highway 42 to the Kentucky-Ohio State line, points in West Virginia on and south of a line commencing at the Ohio-West Virginia State line and extending along West Virginia Highway 47 to Linn, W. Va., and thence over U.S. Highway 33 to the West Virginia-Virginia State line.

HEARING: December 6, 1963, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Dallas B. Russell.

No. MC 109382 (Sub-No. 13), filed September 13, 1963. Applicant: JONAS P. DONMOYER, INC., Ono, Pa. Applicant's attorney: Christian V. Graf, 407 North Front Street, Harrisburg, Pa. Au-

thority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Dolomitic limestone and dolomitic limestone products, in bulk and in packages, from points in Lehigh County, Pa., to points in Maryland, New Jersey, New York, and Delaware.

HEARING: December 16, 1963, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner William A. Royall.

No. MC 110525 (Sub-No. 601), filed September 17, 1963. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, Pa. Applicant's attorney: Leonard A. Jaskiewicz, Munsey Building, Washington 4, D.C. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Toluene diisocyanate, in bulk, in tank vehicles, from Ashtabula, Ohio, to points in Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

HEARING: December 16, 1963, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner J. Thomas Schneider.

No. MC 111238 (Sub-No. 7), filed April 7, 1963. Applicant: DOLLISON TRUCK LINES, INC., 1000 Pennsylvania Avenue, Charleston, W. Va. Applicant's attorney: Charles E. Anderson, Post Office Box 3164, Charleston 32, W. Va. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Magazines, periodicals, and magazine parts and sections*, (a) from Cincinnati, Ohio to Ashland, Ky., Portsmouth, Ohio and Parkersburg, W. Va., and (b) from Charleston, W. Va., to Huntington, Parkersburg, Beckley, Bluefield, Logan, and Welch, W. Va., Ashland, Ky., and Portsmouth, Ohio. (2) *Motion picture films, in containers, materials used in advertising the exhibition of motion pictures, and machinery, materials and supplies*, used in the maintenance and operation of sound systems and theater projection rooms, between Cincinnati, Ohio and points in Logan County, W. Va.

HEARING: December 19, 1963, in Room 3262 Third Floor, U.S. Courthouse and Federal Office Building, 500 Quarrier Street, Charleston, W. Va., before Joint Board No. 62, or if the Joint Board waives its right to participate, before Examiner William J. Cave.

No. MC 113828 (Sub-No. 50), filed October 25, 1963. Applicant: O'BOYLE TANK LINES, INCORPORATED, 4848 Cordell Avenue NW., Washington 14, D.C. Applicant's attorney: William P. Sullivan, 1825 Jefferson Place NW., Washington 36, D.C. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Dry chemicals, in bulk, in tank truck vehicles, from points in Kanawha County, W. Va., to points in North Carolina and South Carolina.

HEARING: December 5, 1963, at the New Queen Charlotte Hotel, Charlotte,

N.C., before Examiner Charles J. Murphy.

No. MC 114019 (Sub-No. 107), filed October 28, 1963. Applicant: MIDWEST EMERY FREIGHT SYSTEM, INC., 7000 South Pulaski Road, Chicago, Ill. Applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Hydrofluosilicic acid, in bulk, in tank vehicles, from the plant site of the Des Plaines Chemical Company at or near Morris, Ill., to points in Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

HEARING: November 22, 1963, at the Midland Hotel, Chicago, Illinois, before Examiner James O'D. Morgan.

No. MC 114457 (Sub-No. 11), (AMENDED), filed September 8, 1963, published in FEDERAL REGISTER issue of September 18, 1963, republished as amended, this issue. Applicant: DART TRANSIT COMPANY, a corporation, 780 North Prior Avenue, St. Paul, Minn. Applicants' attorney: James C. Hardman, 33 North La Salle Street, Suite 3600, Chicago 2, Ill. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Fresh meat, cured meat, frozen foods, canned foods, and dairy products* as described in Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in mixed or straight shipments, from Chicago, Ill., Minneapolis and St. Paul, Minn., and points in Eau Claire, Barron, Green, Columbia, Wood, and Brown Counties, Wis., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the District of Columbia; (2) *dairy products, frozen poultry, and exempt commodities*, in mixed or straight shipments, from points in Minnesota, and points in Wood, Clark, Marathon, Manitowoc, Sheboygan, Green, Buffalo, Trempealeau, and Eau Claire Counties, Wis., and Chicago, Ill., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the District of Columbia; (3) *empty containers or other such incidental facilities* (not specified) used in transporting the commodities specified in (1) and (2) above, on return. Restriction: The proposed operations in (1) above are to be restricted as follows: (a) Shipments from Chicago, Ill., are restricted to shipments requiring prior pickup at one or more of the named origin points. (b) Shipments from Minneapolis and St. Paul, Minn., are restricted to shipments requiring additional pickup at one or more points in the designated Wisconsin areas. The proposed operations in (2) above are to be restricted as follows: Shipments from Chicago, Ill., are restricted to shipments requiring prior pickup at one or more of the named origin points.

NOTE: The purpose of this amendment is to add dairy products to (1) above, and change the hearing information.

HEARING: November 12, 1963, at the Midland Hotel, Chicago, Ill., before Examiner John S. Messer.

No. MC 114725 (Sub-No. 10), filed October 2, 1963. Applicant: WYNNE TRANSPORT SERVICE, INC., 1528 North 11th Street, Omaha, Nebr. Applicant's attorney: J. Max Harding, 1319 First National Bank Building, Omaha, Nebr. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia, aqua ammonia, nitrogen fertilizer solutions, and other fertilizer solutions*, in bulk, in tank vehicles, from Fremont, Nebr., and points within 10 miles thereof, to points in Iowa, Kansas, Minnesota, Missouri, and South Dakota, and *damaged or rejected shipments of the above-specified commodities*, on return.

HEARING: December 13, 1963, at the Hotel Sheraton Fontenelle, Omaha, Nebr., before Examiner Jair S. Kaplan.

No. MC 115379 (Sub-No. 11), filed September 13, 1963. Applicant: JOHN D. BOHR, JR., Rural Delivery No. 2, Annville, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dolomitic limestone and dolomitic limestone products*, in bulk and in packages, from points in Lehigh County, Pa., to points in Maryland, New Jersey, New York, and Delaware.

HEARING: December 16, 1963, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner William A. Royall.

No. MC 115669 (Sub-No. 40) (AMENDMENT), filed May 24, 1963, published FEDERAL REGISTER issue of October 23, 1963, amended October 24, 1963, and republished as amended this issue. Applicant: HOWARD N. DAHLSTEN, doing business as DAHLSTEN TRUCK LINE, Clay Center, Nebr. Applicant's attorney: Donald L. Stern, 924 City National Bank Building, Omaha, Nebr. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Animal and poultry feed, animal and poultry feed ingredients* (except the foregoing commodities in bulk liquid form), and *animal and poultry health products, insecticides, pesticides, empty bags, and other containers, advertising matter and premiums*, all when shipped with any of the various feeds or ingredients specified above: (a) from Danville and Monmouth, Ill., to points in Iowa and Nebraska; (b) from points in Iowa to points in Missouri, Kansas, Colorado, Nebraska, Wyoming, North Dakota, South Dakota, and Minnesota; (c) from points in Nebraska to points in Kansas, Colorado, Wyoming, and South Dakota; (2) *animal and poultry feed ingredients* (except the foregoing commodities in bulk liquid form); (a) from points in South Dakota and Minnesota to points in Iowa, Nebraska, Kansas, and Colorado; (b) from points in Nebraska to points in Iowa, Minnesota, Monmouth, and Danville, Ill.; (c) from points in Colorado to points in Kansas and Nebraska; (d) from points in Missouri to points in Nebraska, Colorado, and Kansas.

NOTE: The purpose of this republication is to set forth the issues involved as above in lieu of those published in the previous issue.

HEARING: Remains as assigned December 9, 1963, at the Hotel Sheraton Fontenelle, Omaha, Nebr., before Examiner Jair S. Kaplan.

No. MC 115669 (Sub-No. 41) (AMENDMENT), filed July 17, 1963, published FEDERAL REGISTER issue October 23, 1963, amended October 21, 1963, and republished as amended this issue. Applicant: HOWARD N. DAHLSTEN, doing business as DAHLSTEN TRUCK LINE, Clay Center, Nebr. Applicant's attorney: Donald L. Stern, 924 City National Bank Building, Omaha, Nebr. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Salt, salt products, mineral mixtures and pepper (ground)*, from Hutchinson, Kans., to points in Montana on and east of a line beginning at the Montana-Wyoming State line and extending along U.S. Highway 89 through Livingston and White Sulphur Springs, Mont., to Great Falls, Mont., and thence along U.S. Highway 91 through Conrad and Shelby, Mont., to the international boundary line between the United States and Canada, (2) *salt, salt products, and mineral mixtures, in bulk, and salt, salt products, mineral mixtures and pepper (ground) in mixed shipments of bulk and packages*, from Hutchinson, and Lyons, Kans., to St. Joseph, Mo., (3) *mineral mixtures and pepper (ground)*, from Hutchinson, Kans., to points in Iowa, and Illinois, and (4) *mineral mixtures*, from Lyons, Kans., to points in Iowa, Illinois, Nebraska, Colorado, Missouri (except Kansas City, St. Louis, and St. Joseph), and points in Montana on and east of a line beginning at the Wyoming-Montana State line and extending along U.S. Highway 89 through Livingston and White Sulphur Springs, Mont., to Great Falls, Mont., thence along U.S. Highway 91 through Conrad and Shelby, Mont., to the international boundary line between the United States and Canada.

NOTE: The purpose of this republication is to delete the entire commodity description, origin and destination points as shown in previous publication, and substitute therefor the commodities and proposed service as shown above.

HEARING: Remains as assigned December 11, 1963, at the Hotel Sheraton Fontenelle, Omaha, Nebr., before Examiner Jair S. Kaplan.

No. MC 116119 (Sub-No. 13), filed July 12, 1963. Applicant: JOHN F. HARRIS, doing business as HOGANS TRANSFER & STORAGE CO., 1122 South Davis Avenue, Elkins, W. Va. Applicant's attorney: Leonard A. Jaskiewicz, Munsey Building, Washington 4, D.C. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from Cleveland, Ohio to Morgantown, W. Va., and *empty containers or other such incidental facilities* (not specified) used in transporting the above-specified commodities, on return.

NOTE: Applicant holds common carrier authority in MC 106002 and Subs thereunder; therefore dual operations may be involved.

HEARING: December 18, 1963, in Room 3262 Third Floor, U.S. Courthouse and Federal Office Building, 500 Quarrier Street, Charleston, W. Va., before Joint Board No. 59, or, if the Joint Board waives its right to participate, before Examiner William J. Cave.

No. MC 116273 (Sub-No. 17), (AMENDMENT), filed September 6, 1963, published in FEDERAL REGISTER issue October 30, 1963, and republished as amended this issue. Applicant: D & L TRANSPORTS, INC., 3800 South Laramie Avenue, Cicero, Ill. Applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal tar and coal tar products*, in bulk, in tank vehicles, from Chicago, Ill., to Milwaukee, Wis.

NOTE: The purpose of this republication is to show the enlarged commodity description.

HEARING: Remains as assigned December 10, 1963, at the Midland Hotel, Chicago, Ill., before Joint Board No. 17.

No. MC 116763 (Sub-No. 38), filed October 25, 1963. Applicant: CARL SUBLER TRUCKING INC., Auburndale, Fla., mailing address North West Street, Versailles, Ohio. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Char, char briquettes, and charcoal briquettes, and, (2) wood blocks (including chips or sawdust), fuel lighting liquids, flavoring sticks, or pellets, vermiculite (other than crude), perlite (other than crude), display racks and other advertising material, in mixed shipments in the same vehicle with char, char briquettes or charcoal briquettes*, from Marion, Ohio, to points in Alabama, Arkansas, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin.

HEARING: November 20, 1963, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Donald R. Sutherland.

No. MC 117119 (Sub-No. 106), filed September 12, 1963. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., Elm Springs, Ark. Applicant's attorneys: John H. Joyce, 26 North College, Fayetteville, Ark., and A. Alvis Layne, Pennsylvania Building, Washington, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery*, in vehicles equipped with mechanical refrigeration, from Oklahoma City, Okla., to Los Angeles and San Francisco, Calif., Portland, Oreg., and Seattle, Wash.

HEARING: December 17, 1963, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner John B. Mealy.

No. MC 125326 (AMENDMENT), filed May 1, 1963, published **FEDERAL REGISTER** issue June 12, 1963, amended September 23, 1963, and republished as amended this issue. Applicant: HERBERT L. KOONTZ, doing business as EVERGREEN EXPRESS, 833 Lake Elmo Road, Billings, Mont. Applicant's attorney: William S. Rosen, 400 Minnesota Building, St. Paul 1, Minn. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (a) *Canned goods, frozen fruits and vegetables, and canning factory supplies*, and (b) *exempt commodities* when moving in the same vehicle and at the same time as the commodities specified in (a), from points in Minnesota, Fox Lake, Beaver Dam, Ripon, and Rosendale, Wis., and Belvidere and Lanark, Ill., to points in Montana, and Dayton, Waitsburg, Walla Walla, and Olympia, Wash.

NOTE: The purpose of this republication is to change the name of applicant from a corporation to an "individual" as shown above, and to add "exempt commodities" in the commodity description.

HEARING: December 16, 1963, at the Yellowstone County Courthouse, Billings, Montana, before Examiner Richard H. Roberts.

No. MC 119268 (Sub-No. 19), (REPUBLICATION), filed June 3, 1963, published in **FEDERAL REGISTER** issue of July 10, republished this issue. Applicant: OSBORN, INC., 228 North Fourth Street, Gadsden, Ala. Applicant's representative: Robert E. Tate, 2031 Ninth Avenue South, Birmingham 5, Ala. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries, frozen vegetables, and potatoes and potato products, frozen and unfrozen, cooked, uncooked and blanched*, from points in Idaho and Oregon to points in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, and *exempt commodities*, on return, said authority to be utilized in connection with the authority sought by applicant in its Sub 20 application wherein service is proposed from points in California to the same destination states.

CONTINUED HEARING: December 11, 1963, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Edward E. Kobernusz.

No. MC 119268 (Sub-No. 20) (REPUBLICATION), filed June 24, 1963, published in **FEDERAL REGISTER** issue of August 4, 1963, and republished this issue. Applicant: OSBORN, INC., 228 North Fourth Street, Gadsden, Ala. Applicant's representative: Robert E. Tate, 2031 Ninth Avenue South, Birmingham 5, Ala. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits, frozen berries, frozen vegetables, and potatoes and potato products, frozen and unfrozen, cooked, uncooked, and blanched*, from points in California, to

points in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, and *exempt commodities*, on return, said authority to be utilized in connection with authority sought by applicant in its Sub-19 application wherein service is proposed from points in Idaho and Oregon to the same destination States.

CONTINUED HEARING: December 11, 1963, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Edward E. Kobernusz.

No. MC 125448, filed June 13, 1963. Applicant: KACHUR MOBILE SALES, INC., Route 2, Rayland, Ohio. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Housetrailer*s, between points in Ohio, West Virginia, Indiana, Kentucky, Pennsylvania, Virginia, Maryland, and the District of Columbia.

HEARING: December 17, 1963, in Room 3262 Third Floor, U.S. Courthouse and Federal Office Building, 500 Quarrier Street, Charleston, W. Va., before Examiner William J. Cave.

No. MC 125481 (Sub-No. 2), filed October 1, 1963. Applicant: NORTHWESTERN LOCKER & COLD STORAGE CO., a corporation, U.S. Route No. 50 East, Post Office Box 1523, Parkersburg, W. Va. Applicant's attorney: Jack L. Miller, 205 Fourth Street, Box 1754, Parkersburg, W. Va. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fresh meats, packinghouse products, and dairy products*, as defined in Appendix I, sections A, B, and C to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Parkersburg, W. Va., to points in Morgan, Athens, and Washington Counties, Ohio and points in Wetzel, Tyler, Pleasants, Ritchie, Wood, Wirt, Mason, Jackson, and Roane Counties, W. Va.

NOTE: Applicant states the above proposed operations will be performed for the account of Wilson & Co., Inc.

HEARING: December 17, 1963, in Room 3262, Third Floor, U.S. Courthouse and Federal Office Building, 500 Quarrier Street, Charleston, W. Va., before Joint Board No. 61, or, if the Joint Board waives its right to participate, before Examiner William J. Cave.

No. MC 125561 (AMENDMENT), filed July 29, 1963, published in **FEDERAL REGISTER** issue October 30, 1963, republished as amended, this issue. Applicant: SUNNYSIDE TRANSFER, INC., Seventh and Northern Pacific Tracks, Sunnyside, Wash. Applicant's attorney: George R. LaBissoniere, 333 Central Building, Seattle 4, Wash. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between Grandview and Sunnyside, Wash., on the one hand, and, on the other, points within an area bounded by the Columbia

River on the east, State Road 11A on the north, U.S. Highway 97 and State Road 3A on the west, and State Road 8 on the south (excluding service to the cities of Wapato, Toppenish, Yakima, and Moxee).

NOTE: Applicant states the proposed service is to be restricted to traffic moving in pick up and delivery service for the account of and on the billing of line haul carriers only. The purpose of this republication is to clarify the description of the territory to be served.

HEARING: Remains as assigned, December 19, 1963, at the Federal Office Building, Seattle, Wash., before Joint Board No. 80, or, if the Joint Board waives its right to participate before Examiner Lacy W. Hinely.

No. MC 125565, filed July 16, 1963. Applicant: REILLEY'S INCORPORATED, 1309 South Wheeling Avenue, Glendale, W. Va. Applicant's representative: D. L. Bennett, 213 First National Bank Building, 2207 National Road, Wheeling, W. Va. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked, disabled, stolen, repossessed, and abandoned motor vehicles, including trailers and semitrailers* (1) between Glendale, W. Va., on the one hand, and on the other points in Ohio on and east or south of a line beginning at the Ohio-West Virginia State line at Pomeroy, Ohio, thence over U.S. Highway 33 to Chauncey, Ohio, thence over Ohio Highway 13 to its junction with Ohio Highway 75 thence over Ohio Highway 75 to Zanesville, Ohio, thence over Ohio Highway 77 to its junction with Ohio Highway 16, thence over Ohio Highway 16 to Coshocton, Ohio, thence over Ohio Highway 76 to Wooster, Ohio, thence over Ohio Highway 3 to Medina, Ohio, thence over Ohio Highway 18 to the Ohio-Pennsylvania State line, and (2) between Glendale, W. Va., on the one hand, and on the other, points in Pennsylvania on and west or south of a line beginning at the Pennsylvania-West Virginia State line near Frostburg, Md., thence over U.S. Highway 219 to Johnstown, Pa., thence over Pennsylvania Highway 56 to Homer, Pa., thence over U.S. Highway 119 to Indiana, Pa., thence over U.S. Highway 422 to the Ohio-Pennsylvania State line.

HEARING: December 18, 1963, in Room 3262, Third Floor, U.S. Courthouse and Federal Office Building, 500 Quarrier Street, Charleston, W. Va., before Joint Board No. 59, or, if the Joint Board waives its right to participate, before Examiner William J. Cave.

No. MC 125602, filed August 12, 1963. Applicant: GERALD J. LOCKWOOD, doing business as JERRY LOCKWOOD, Rt. No. 1, Box 254, Parairie View, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Livestock*, other than ordinary livestock; *show animals, show and race horses, mules, and ponies; stable equipment and personal effects of attendants*, in the same vehicle, between points in Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Minnesota, Missouri, Ohio, Tennessee, Wisconsin, and Michigan.

HEARING: December 10, 1963, at the Midland Hotel, Chicago, Ill., before Examiner Warren C. White.

No. MC 125672, filed September 13, 1963. Applicant: ADAMS EGG FARMS, INC., Post Office Box 505, Mendenhall, Miss. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City 6, N.J. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Asphalt* (other than in bulk, in tank vehicles), from Mertztown, Pa., and Perth Amboy, N.J., to Mendenhall, Miss., (2) *steel*, from Lynhurst, and Kearny, N.J., to Mendenhall, Miss., (3) *wire*, insulated or plain, from Pawtucket, R.I., to Mendenhall, Miss., (4) *clamps*, metal, from Ridgefield, N.J., to Mendenhall, Miss., (5) *fluorescent ballasts, materials and supplies used in the manufacture of fluorescent ballast*, from Paterson, N.J., to Mendenhall, Miss., and (6) *electrical capacitors, wire, and paper*, from Bridgeport, Conn., to Mendenhall, Miss.

NOTE: Applicant states, the proposed service will be under continuing contract with Universal Manufacturing Corporation and its subsidiaries located at Paterson, N.J.

HEARING: December 6, 1963, at the offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Leo A. Riegel.

No. MC 125686, filed September 17, 1963. Applicant: EAST COAST TRANSPORT COMPANY, INCORPORATED, St. Paul Street, Goldsboro, N.C. Applicant's attorney: Eugene T. Liipfert, 801 National Grange Building, 1616 H Street NW., Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer, and liquid fertilizer materials*, in bulk, in tank vehicles, (1) from Hopewell, Va. and points within ten (10) miles thereof, to points in North Carolina, and (2) from Wilson, Goldsboro, Rocky Mount, Wilmington, and Greenville, N.C., to points in Virginia and South Carolina.

HEARING: December 6, 1963, at the U.S. Courtrooms, Uptown Post Office Building, Raleigh, N.C., before Joint Board No. 196.

APPLICATIONS FOR BROKERAGE LICENSES

MOTOR CARRIERS OF PASSENGERS

No. MC 12787 (Sub-No. 1), filed September 6, 1963. Applicant: WHEELING AUTOMOBILE CLUB, 496 National Road, Wheeling, W. Va. Applicant's attorney: Benjamin M. Spurr, 1226 Chapline Street, Wheeling, W. Va. For a license (BMC 5) to engage in operations as a *broker* at Wheeling, W. Va. in arranging for transportation by motor vehicle, in interstate or foreign commerce of *passengers and their baggage*, in groups, in sightseeing and educational tours, beginning and ending at Wheeling, W. Va. and extending to points in Alabama, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

HEARING: December 16, 1963, in Room 3262, Third Floor, U.S. Courthouse and Federal Office Building, 500 Quarrier Street, Charleston, W. Va., before Joint Board No. 118, or, if the Joint Board waives its right to participate, before Examiner William J. Cave.

No. MC 12879, filed September 11, 1963. Applicant: MRS. MARGARET V. RUDY, 850 East Moler Avenue, Post Office Box 681, Martinsburg 5, W. Va. For a license (BMC 5) to engage in operations as a *broker* at Martinsburg, W. Va., in arranging for transportation by motor vehicle, in interstate or foreign commerce of *passengers and their baggage*, both as individuals and in groups, in charter operations, beginning and ending at Martinsburg, W. Va., and extending to points in Pennsylvania, Maryland, New Jersey, New York, Virginia, and the District of Columbia.

HEARING: December 16, 1963, in Room 3262, Third Floor, U.S. Courthouse and Federal Office Building, 500 Quarrier Street, Charleston, W. Va., before Joint Board No. 118, or, if the Joint Board waives its right to participate, before Examiner William J. Cave.

APPLICATIONS IN WHICH HANDLING WITHOUT ORAL HEARING HAS BEEN ELECTED

MOTOR CARRIERS OF PROPERTY

No. MC 4189 (Sub-No. 5) filed October 21, 1963. Applicant: BRICK TRUCKING SERVICE COMPANY, a corporation, Post Office Box 207, Lee's Summit, Mo. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Clay products*, (1) from the plants of the Acme Brick Company, located at Weir, Kans., and Harrisonville and Kansas City, Mo., to points in Iowa and Nebraska; and, (2) from the plants of the Acme Brick Company, located at Buffalo, Kanopolis, and Weir, Kans., to points in Missouri east of U.S. Highway 63.

No. MC 43468 (Sub-No. 9), filed October 24, 1963. Applicant: VICTORY MOTOR FREIGHT, INC., 6001 U.S. Route 60, Huntington, W. Va. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Compressed and liquid argon gas*, in cylinders, from Butler, Pa., to Huntington, W. Va.

No. MC 107403 (Sub-No. 505), filed October 16, 1963. Applicant: E. BROOKE MATLACK, INC., 33d and Arch Streets, Philadelphia 4, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum lubricating grease*, in bulk, in tank vehicles, from Woodhaven Village, Mich., to Ashland, Ky.

No. MC 110525 (Sub-No. 611), filed October 18, 1963. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, Pa. Applicant's attorney: Leonard A. Jaskiewicz, Munsey Building, Washington 4, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flavoring compound, for use in flavoring whiskey*, in bulk, in tank vehicles, from the plant site of Fries & Fries Co., located at Cincinnati, Ohio to Lawrenceburg, Ind.

No. MC 116198 (Sub-No. 5), filed October 23, 1963. Applicant: DONALD W.

WINLAND, doing business as WINLAND TRUCKING, Georgetown, Ill. Applicant's attorney: Paul J. Maton, Suite 1149-10, South La Salle Streets, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, seasonal between February 15th and November 15th inclusive, transporting: (A) *Fertilizer and fertilizer materials*, in bulk and in bags, (1) between Danville, Ill. and points within five (5) miles thereof, on the one hand, and, on the other, Columbus, Ohio, Butler, Ind., and Louisville, Ky., and (2) from Danville, Ill., and points within five (5) miles thereof, to points in Benton, Boone, Carroll, Cass, Clinton, Clay, Fountain, Fulton, Greene, Hamilton, Hendricks, Howard, Jasper, Lake, Miami, Morgan, Montgomery, Newton, Owen, Parke, Porter, Pulaski, Putnam, Starke, Sullivan, Tippecanoe, Tipton, Warren, White, Vermillion, and Vigo Counties, Ind., and (B) *fertilizer materials*, from points in the Indiana counties named in (2) above to Danville, Ill.

NOTE: Applicant states it holds contract carrier authority to perform the above operations in MC 114668 and by the instant application requests that the contract carrier authority be canceled upon the granting of common carrier authority.

No. MC 120372 (Sub-No. 1), filed October 11, 1963. Applicant: BESSIE McBRIDE, doing business as BECKER BROS., 2329 Emerald Street, Philadelphia, Pa. Applicant's attorney: Morris J. Winokur, 2 Penn Center Plaza, Pennsylvania Boulevard at 15th Street, Philadelphia, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *General commodities* (excluding household goods in use) between points in the City and County of Philadelphia and that portion of Upper Darby Township, Delaware County, which is within four (4) miles, by the usually traveled highways, of the western limits of the County of Philadelphia, provided, that no right, power or privilege is granted to transport from retail stores to their customers, (2) *general commodities*, from the said territory to other points in Pennsylvania within an airline radius of twenty-five (25) miles of the Philadelphia City Hall for D. Goldenberg, Inc., and Abeeco Mills, Inc., and (3) *general commodities* (excluding such as require the use of vehicles having winches or cranes attached thereto or low-bed carryalls), from the plant of the Philadelphia Gear Corporation in the Village of King of Prussia, Montgomery County, to points in the City and County of Philadelphia and vice versa.

No. MC 125336 (Sub-No. 1), filed October 10, 1963. Applicant: ELWOOD H. NELSON AND MARY K. NELSON, doing business as NELSON'S MOVING & STORAGE, Snow Hill Road, Salisbury, Md. Applicant's representative: L. Merrill Simpson, 4631 Harcourt Road, Baltimore 14, Md. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cosmetics*, in individual shipments of 100 pounds or less, from Salisbury, Md., to points in Queen Annes, Talbot, Caroline, Dorchester, Wicomico, Worcester,

and Somerset Counties, Md., and Accomack and Northampton Counties, Va.

No. MC 125773, filed October 24, 1963. Applicant: WALTER R. PLANKINTON, doing business as BEELINE EXPRESS, 9071 Cedar Court, Thornton 29, Colo. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Live bees in hives and supplies that may be used by beekeepers* when such supplies are transported in the same vehicle with live bees, between points in Colorado and Nebraska, on the one hand, and, on the other, points in California.

NOTICE OF FILING OF PETITIONS

No. MC 73616 (PETITION FOR ADMINISTRATIVE DETERMINATION OR INTERPRETATION OF CERTIFICATE NO. MC-73616), filed October 10, 1963. Petitioner: BILKAYS EXPRESS CO., a corporation, 303 South Street, Newark, N.J. Petitioner's attorney: Robert DeKroyft, 233 Broadway, New York 7, N.Y. In MC 73616 petitioner is authorized to transport general commodities, with the usual exceptions, between points in Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Sussex, Union, and Warren Counties, N.J., and those in Middlesex and Somerset Counties, N.J., north of the Raritan River, on the one hand, and, on the other, points in the New York, N.Y., commercial zone, as defined by the Commission in 1 M.C.C. 665. By the instant petition, petitioner prays that the Commission make an administrative determination or interpretation of its authority to conduct operations in interstate commerce between Newark, N.J., on the one hand, and, on the other, points in Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Sussex, Union, and Warren Counties, N.J., as well as points in Middlesex and Somerset Counties, N.J., north of the Raritan River. Any person or persons desiring to participate in this proceeding, may, within 30 days from the date of this publication in the FEDERAL REGISTER, file an appropriate pleading.

No. MC 109772 and MC 109772 (Sub-No. 4), PETITION FOR MODIFICATION OF CERTIFICATES PURSUANT TO THE REPORT AND ORDER OF THE COMMISSION IN NO. MC-C-3024, filed October 4, 1963. Petitioner's ROBERTSON TRUCK-A-WAYS, INC., 7101 East Slauson Avenue, Los Angeles 22, Calif. Petitioner's attorney: Charles Pieroni, 523 Johnson Building, Munsey, Ind. Petitioner is authorized in certificate No. MC 109772, in part, to transport new automobiles and new trucks, in initial movements, by the truckaway method, over irregular routes, from Maywood, Calif. and points within 1 mile thereof, to points in Oregon, and in MC 109772 (Sub-No. 4), in part, to transport automobiles, in initial movements, in truckaway service, over irregular routes, from the site of the plant of the Chrysler Corporation located adjacent to Maywood, Calif., to points in Idaho and Washington. In view of the report of the Commission of October 15, 1962, in No. MC-C-3024, National Automobile Transporters Association Petition for Declaratory Order (wherein provision is

made for modification of existing authorities under certain conditions), the holder of the above-described operating authority, by petition filed October 4, 1963, requests that the Commission modify its No. MC 109772 and No. MC 109772 (Sub-No. 4) to include the right to transport new automobiles in secondary movements between points in Oregon, Washington, and Idaho, restricted to traffic originating at Maywood, Calif. Any person or persons desiring to participate in this proceeding may file replies to said petition (original and fourteen (14) copies each) within 45 days from the date of this publication in the FEDERAL REGISTER.

No. MC 115915 (Sub-No. 7), (PETITION TO ADD SHIPPER), filed October 10, 1963. Petitioner: FRED E. HAGEN, doing business as HAGEN TRUCK LINE, Sioux City, Iowa. Petitioner holds authority in No. MC 115915 (Sub-No. 7) to transport meats, meat products and meat byproducts, dairy products, articles distributed by meat packinghouses, as described in the appendix to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, over irregular routes, from Omaha, Nebr., to points in that part of Minnesota bounded by a line beginning at the Minnesota-North Dakota State line near Moorhead, Minn., at U.S. Highway 10, and extending along U.S. Highway 10 to junction U.S. Highway 210, thence along U.S. Highway 210 to junction U.S. Highway 371, thence south along U.S. Highway 371 to junction U.S. Highway 10, thence along U.S. Highway 10 to junction U.S. Highway 52, thence along U.S. Highway 52 to junction U.S. Highway 14, thence along U.S. Highway 14 to Minnesota-Wisconsin State line, and thence along the Minnesota-Wisconsin, Minnesota-Iowa, Minnesota-South Dakota, and Minnesota-North Dakota State lines to point of beginning, including all points in Minnesota on said highway boundaries, limited to a transportation service to be performed under a continuing contract or contracts with Armour & Company, of Omaha, Nebr. By the instant petition, filed October 10, 1963, petitioner requests that Swift & Company, Omaha, Nebr., be added to its present restriction, this shipper to be in addition to the one presently authorized. Any person or persons desiring to oppose the addition of this shipper, may, within 30 days from the date of this publication in the FEDERAL REGISTER, file an appropriate pleading.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 1.240 TO THE EXTENT APPLICABLE

No. MC 68078 (Sub-No. 19), filed October 24, 1963. Applicant: CENTRAL MOTOR EXPRESS, INC., 2909 South Hickory Street, Chattanooga, Tenn., 37407. Applicant's attorney: Blaine Buchanan, 1024 James Building, Chattanooga, Tenn. Authority sought to operate as a common carrier, by motor vehicle, over regular and irregular routes, transporting: (a) General commodities regular routes: (1) Between Heflin, Ala., and Birmingham, Ala., from Heflin over U.S. Highway 78 and Interstate Highway

20 to Birmingham and return over the same route, serving no intermediate points, and (2) between Birmingham and Cullman, Ala., from Birmingham over U.S. Highway 31 to Cullman, and return over the same route, serving all intermediate points. (b) General commodities (except liquid commodities in bulk in tank vehicles) between Tuscaloosa, Ala., and Mobile, Ala., from Tuscaloosa over U.S. Highway 43 to Mobile, and return over the same route, serving no intermediate points. (c) General commodities (except those requiring special equipment, commodities in bulk and those injurious to other lading), (1) between Birmingham and the Alabama-Mississippi State line, from Birmingham over U.S. Highway 11 to Tuscaloosa, thence over U.S. Highway 82 to the Alabama-Mississippi State line, and return over the same route, serving all intermediate points, and (2) between Reform, Ala., and Aliceville, Ala., from Reform over Alabama Highway 17 to Aliceville, and return over the same route, serving all intermediate points. (a) General commodities. Irregular routes. Between points within an eighteen (18) mile radius of Anniston, Ala. (b) General commodities (except household goods), between points within a ten (10) mile radius of Cullman, Ala., on the one hand, and, on the other, points in Alabama within a 125-mile radius of Cullman, Ala. (c) Farm products (not including manufactured products thereof, cotton and household goods), between points in Alabama. (d) Electrical supplies, namely: transformers, meters, filter paper, pole line material, hardware, arrester fluid, transformer oil, water heaters, meter boxes, wire (copper and aluminum), and such electrical supplies as are used in power line construction and maintenance of small power plants and to include light poles, between Anniston, Sylacauga, Birmingham, Pell City, Montgomery, Ashland, Gadsden, Roanoke, Eastaboga, Talladega, Childersburg, Lineville, Dadeville, Jacksonville, Camp Hill, Mobile, Goodwater, Phenix City, Jasper, Wedowee, North Birmingham, and Woodlawn, Ala. (e) Tires and batteries, between Birmingham, Ala., and Anniston, Ala. (f) Clay products and concrete pipe, in truckload only, from Anniston, Ala., to Bynum, Ala. (g) Lumber, in truckload only, from Anniston, Ala., to Guntersville, Ala. (h) Coal, in truckloads only (minimum 12,000 pounds), (1) from Leeds, Ala., to Anniston, Ala., and (2) from Red Diamond, Ala., to Anniston, Ala. (i) Relief supplies, when distributed by the Calhoun County Department of Public Welfare, between points in Calhoun County, Ala. (j) Bottled beverages and empty bottles, between Anniston, Ala., on the one hand, and, on the other, points within a fifty (50) mile radius of Anniston, Ala. (k) Cottonseed meal and hulls, in truckload lots only (minimum 5,000 pounds), between Anniston, Ala., on the one hand, and, on the other, Talladega, Ala. (1) Special commodities, namely: roofing, floor blocks, water pipe, building material, sewer pipe, pipe fittings, cast iron pipe, soil pipe, animal feed, lumber, cement, plate glass, pitch, thimbles, flue linings, felt, clamps, mortar hods, brick,

plywood, controllers, track frogs, electric appliances, clay products, turpentine, oxygen (in cylinders), empty cylinders, linseed oil, sheet steel, excelsior, paint, contractors' machinery, soil pipe fittings, and asphalt, in truckloads only (minimum 10,000 pounds), between Anniston, Ala., and Birmingham, Ala. (m) Rice, sugar, baking powder, and canned goods, to move in mixed shipments of not less than 2,000 pounds, from Birmingham, Ala., to Anniston, Ala. (n) Tar, pipe drip, and empty drums, in truckload lots (minimum on tar and pipe drip 10,000 pounds, minimum on empty drums 1,000 pounds), between Woodward, Fairfield, and Anniston, Ala.

NOTE: Applicant states that it is the purpose and intent of CENTRAL MOTOR EXPRESS, INC., to operate the above routes and also to tack or join the above-sought authority to presently held certificates of CENTRAL MOTOR EXPRESS, INC. in MC 68078 and Subs thereto, for the through transportation of freight between all points on the combined rights, including the terminal zones of the respective points. This is a matter directly related to MC-F 8581.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-8581. Authority sought for purchase by CENTRAL MOTOR EXPRESS, INC., 2909 South Hickory Street, Chattanooga, Tenn., 37407, of the operating rights and property of EAST ALABAMA EXPRESS, INC., P.O. Box 1528, M Street, Anniston, Ala., and for acquisition by B. F. HAWK, also of Chattanooga, of control of such rights and property through the purchase. Applicants' attorney: Blaine Buchanan, 1024 James Building, Chattanooga, Tenn., 37402. Operating rights sought to be transferred: Under the "grandfather" provisions of section 206(a)(7) of the Interstate Commerce Act, pursuant to BOR-99, in No. MC-99151 (Sub-4), in the State of Alabama. Vendee is authorized to operate as a *common carrier* in Tennessee, Alabama, and Georgia. Application has been filed for temporary authority under section 210a(b).

NOTE: No. MC-68078 Sub-19 is a matter directly related.

No. MC-F-8582. Authority sought for purchase by TELISCHAK TRUCKING, INC., 12300 Farmington Road, Livonia, Mich., of the operating rights of HOGUE FREIGHT LINES, INC., 4840 Wyoming Avenue, Dearborn 2, Mich., and for acquisition by MIKE TELISCHAK, also of Livonia, Mich., of control of such rights through the purchase. Applicants' attorney: William B. Elmer, 22644 Gratiot Avenue, East Detroit, Mich. Operating rights sought to be transferred: *Cement*, in bags and in bulk, as a *common carrier* over irregular routes, from points in Monroe County, Mich., to points in

Indiana and Ohio, from Detroit and Port Huron, Mich., to points in Indiana; *cement*, from St. Joseph, Mich., to points in Illinois, Indiana, and Ohio. Vendee is authorized to operate as a *common carrier* in Michigan, Indiana, Ohio, Illinois, Kentucky, New York, and Pennsylvania, and as a *contract carrier* in Michigan and Ohio. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-8583. Authority sought for purchase by RALPH POZZI, CARL A. POZZI, CLINTON D. POZZI, and WAYNE POZZI, a partnership, doing business as POZZI BROS. TRANSPORTATION CO., 705 Meeker Street, Kent, Wash., of the operating rights and property of TACOMA-FT. LEWIS AUTO FREIGHT, INC., 808 Puyallup Avenue, Tacoma 2, Wash. Applicants' representative: Joseph O. Earp, 411 Lyon Building, 607 Third Avenue, Seattle 4, Wash. Operating rights sought to be transferred: *Household goods and general commodities*, except those of unusual value, commodities in bulk, livestock in truckload lots, commodities requiring special equipment (other than those requiring specialized handling or rigging because of size or weight), and those injurious or contaminating to other lading, as a *common carrier* over a regular route, between Tacoma, Wash., and Fort Lewis, Wash., serving certain intermediate and off-route points. Vendee is authorized to operate as a *common carrier* in Washington. Application has been filed for temporary authority under section 210a(b).

No. MC-F-8585. Authority sought for purchase by FLORIDA REFRIGERATED SERVICE, INC., U.S. Highway 301 North, Dade City, Fla., of the operating rights of J. A. MILES, JR., 304 East Reynolds Street, Plant City, Fla., and for acquisition by DAVID A. LINDSAY, also of Dade City, Fla., of control of such rights through the purchase. Applicants' attorney: Lawrence D. Fay, 1205 Universal Marion Building, Post Office Box 1086, Jacksonville, Fla., 32201. Operating rights sought to be transferred: *Fresh fruits, and fresh vegetables*, as a *common carrier* over irregular routes, from Plant City, Fla., and points in Florida on and south of Florida Highway 60, to Philadelphia, Pa., New York, N.Y., St. Louis, Mo., Chicago, Ill., Cincinnati, Ohio, Baltimore, Md., and the District of Columbia, from Plant City and Tampa, Fla., to points in Georgia, North Carolina, South Carolina, Baltimore, Md., Jersey City and Newark, N.J., Philadelphia, Pa., New York, N.Y., and the District of Columbia, from Lakeland, Highland City, Plant City, Venice, and Palmetto, Fla., to points in Georgia, North Carolina, South Carolina, Baltimore, Md., Jersey City and Newark, N.J., Philadelphia, Pa., New York, N.Y., and the District of Columbia, from Hendersonville, N.C., and points in South Carolina, to Plant City, Fla.; *frozen fruits*, from Lexington, N.C., to Birmingham, Ala., Pittsburgh, Pa., Wheeling, W. Va., and Akron, Cincinnati, and Columbus, Ohio, from Lexington, N.C., to Milwaukee, Wis.; *frozen fruits and frozen vegetables*, from Plant City and Tampa, Fla., to

points in Georgia, North Carolina, South Carolina, Baltimore, Md., Jersey City and Newark, N.J., Philadelphia, Pa., New York, N.Y., and the District of Columbia, from Plant City, Fla., to points in Alabama, Connecticut, Delaware, Illinois (except Chicago), Indiana (except Lafayette and Indianapolis), Kansas, Kentucky (except Louisville, Lexington, Frankfort, and Middlesboro), Massachusetts, Michigan, Missouri, Ohio (except Cincinnati and Cleveland), Rhode Island, and Tennessee (except Knoxville); *candy*, from Naugatuck, Conn., and Chicago, Ill., to Tampa, Fla.; *frozen vegetables*, from Barker, N.Y., to Plant City, Fla.; *frozen fruits, berries and vegetables*, from Plant City, Fla., to Omaha, Nebr., Milwaukee, Wis., Chicago, Ill., Cincinnati, and Cleveland, Ohio, Pittsburgh, and Scranton, Pa., Wheeling, W. Va., Richmond and Norfolk, Va., and that part of New York bounded by a line beginning at the New York-Canada boundary line at Buffalo, N.Y., and extending along Interstate Highway 90 to Syracuse, N.Y., thence north and west along New York Highway 57 to the shore of Lake Erie at Oswego, N.Y., and thence along the Lake Erie shore and the New York-Canada boundary line to point of beginning, including points on the indicated portions of the highways specified. Vendee is authorized to operate as a *common carrier* in Alabama, Georgia, Florida, Arizona, California, New Mexico, North Carolina, Mississippi, South Carolina, Ohio, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-8586. Authority sought for merger into MOTOR FREIGHT EXPRESS, Post Office Box 1029, York, Pa., of the operating rights and property of THE BALTIMORE TRANSFER COMPANY, OF BALTIMORE CITY, Monument and Dean Streets, Baltimore 5, Md., and for acquisition by THE BALTIMORE TRANSFER COMPANY OF BALTIMORE CITY, Monument and Dean Streets, Baltimore 5, Md., MERCHANTS TERMINAL CORPORATION, 501 North Kresson Street, Baltimore 24, Md., and HOFFBERGER FOUNDATION, INC., 215 North Calvert Street, Baltimore 2, Md., of control of such rights and property through the transaction. MOTOR FREIGHT EXPRESS is controlled directly by THE BALTIMORE TRANSFER COMPANY, through ownership of 100 percent of its capital stock. Applicants' attorney: Robert H. Griswold, Post Office Box 432, Harrisburg, Pa. Operating rights sought to be merged: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier* over regular routes, between Baltimore, Md., and Turnpike, Md., between Baltimore, Md., and Freeland, Md., serving all intermediate points: The foregoing authority covers the substitution of motor service for rail service between the points named and is restricted to traffic moving by rail in joint rail-motor service to or from points beyond the points named, between Petersburg, Va., and New York, N.Y., serving certain intermediate and

off-route points, between junction U.S. Highway 1 and Virginia Highway 10 and Petersburg, Va., serving the intermediate points of Camp Lee and the Federal Reformatory, Va., over an alternate route for operating convenience only; heavy machinery and contractors' equipment and supplies, over irregular routes, from Baltimore, Md., and Washington, D.C., to points in Delaware, Maryland, and New Jersey, Long Island and Staten Island, N.Y., those in Pennsylvania east of U.S. Highway 15 within 150 miles of Baltimore, and those in Virginia within 75 miles of Baltimore. MOTOR FREIGHT EXPRESS, is authorized to operate as a common carrier in New York, Delaware, Pennsylvania, New Jersey, Maryland, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 63-11724; Filed, Nov. 5, 1963;
8:46 a.m.]

[Notice No. 576]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

NOVEMBER 1, 1963.

The following publications are governed by the Interstate Commerce Commission's general rules of practice including special rules (49 CFR 1.241) governing notice of filing of applications by motor carriers of property or passengers or brokers under sections 206, 209, and 211 of the Interstate Commerce Act and certain other proceedings with respect thereto.

All hearings and pre-hearing conferences will be called at 9:30 a.m., U.S. standard time (or 9:30 a.m., local daylight saving time, if that time is observed), unless otherwise specified.

APPLICATIONS ASSIGNED FOR ORAL HEARING OR PRE-HEARING CONFERENCE

MOTOR CARRIERS OF PROPERTY

The applications immediately following are assigned for hearing at the time and place designated in the notice of filing as here published in each proceeding. All of the proceedings are subject to the special rules of procedure for hearing outlined below:

Special rules of procedure for hearing.

- (1) All of the testimony to be adduced by applicant's company witnesses shall be in the form of written statements which shall be submitted at the hearing at the time and place indicated.
- (2) All of the written statements by applicants' company witnesses shall be offered in evidence at the hearing in the same manner as any other type of evidence. The witnesses submitting the written statements shall be made available at the hearing for cross-examination, if such becomes necessary.
- (3) The written statements by applicant's company witnesses, if received in evidence, will be accepted as exhibits. To the extent the written statements refer to attached documents such as

copies of operating authority, etc., they should be referred to in written statements as numbered appendixes thereto.

(4) The admissibility of the evidence contained in the written statements and the appendixes thereto, will be at the time of offer, subject to the same rules as if the evidence were produced in the usual manner.

(5) Supplemental testimony by a witness to correct errors or to supply inadvertent omissions in his written statement is permissible.

No. MC 125776, filed October 25, 1963. Applicant: TRUCKWAY SERVICE, INC., 1099 Oakwood, Detroit, Mich. Applicant's attorneys: James R. Stiverson and Herbert Baker, 50 West Broad Street, Columbus 15, Ohio. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Salt, in bulk, and empty containers or other such incidental facilities (not specified) used in transporting the above-described commodities, between points in Michigan. Restriction: Applicant states that the proposed operations will be restricted to the transportation of salt that has had a prior movement by rail and/or water.

NOTE: Applicant is authorized to conduct operations as a contract carrier in Permit MC 114115 and Subs thereunder, therefore dual operations may be involved.

HEARING: November 21, 1963, at the Lewis Cass Building, Lansing, Mich., before Joint Board No. 76, or, if the Joint Board waives its right to participate, before Examiner William J. O'Brien, Jr.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 63-11725; Filed, Nov. 5, 1963;
8:46 a.m.]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

NOVEMBER 1, 1963.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State commission with which the publication is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. MT-2586, filed October 15, 1963. Applicant: NEW YORK & ALBANY DESPATCH CO., INC., 160 Third Street, Brooklyn, N.Y. Applicant's attorney: Arthur J. Piken, 160-16 Jamaica Avenue, Jamaica 32, N.Y. Certificate of public convenience and

necessity sought to operate a freight service as follows: Transportation of (a) paper and paper bags, from New York City, N.Y., to all points in Suffolk County, N.Y., and (b) general commodities, from New York City, N.Y., to all points in Nassau and Westchester Counties, N.Y. Route I: Between New York City, N.Y. and Utica, N.Y., as follows: From New York City to Albany via U.S. Highway 9; thence to Utica via U.S. Highway 5; also from New York City via New York Highway 404 to the point where said route intersects U.S. Highway 9; also from Peekskill to Beacon via New York Highway 9D; thence via ferry to Newburgh and continuing to Albany via U.S. Highway 9W; also from Poughkeepsie to Hudson via New York Highway 9G; also from Bro Corners to Valatie via New York Highway 9H; also from a point where U.S. Highway 9 and New York Highway 9J intersect and along New York Highway 9J to Rensselaer; also from Schenectady to Utica via New York Highway 5S. Route II: Between New York City, N.Y. and Malone (Franklin County), N.Y., as follows: From New York City to Albany along Route I. From Albany to Rouses Point via U.S. Highway 9; thence to Malone via U.S. Highway 11; also from Albany to Watford via New York Highway 32; thence to Whitehall (Washington County), via U.S. Highway 4; also from East Greenbush to Watford via U.S. Highway 4; also from Troy to Argyle (Washington County) via New York Highway 40; thence from Fort Edward via New York Highway 197; also from the point of intersection of New York Highway 40 and New York Highway 29 and via New York Highway 29 to Salem (Washington County); thence via New York Highway 22 to the point where said highway intersects with U.S. Highway 9; also from Saratoga Springs to Lake George via New York Highway 9K; thence via New York Highway 9N to Keesville (Clinton County); also from the point where New York Highway 28 and U.S. Highway 9 intersect and via New York Highway 28 to Blue Mountain Lake; thence via New York Highway 10 to Malone; also from Tupper Lake (Franklin County) to Plattsburg via New York Highway 3; also from Keene (Essex County) to Saranac Lake via New York Highway 86 and 86A; also from the point where New York Highway 374 intersects New York Highway 3 and via New York Highway 374 to Chateaugay; also from Weverton (Warren County) via New York Highway 8 to the point where said route intersects U.S. Highway 9; and returning in the reverse direction over all of said routes and including service from and to all intermediate points on all of said routes and to the following off-route points: Gloversville and Port Kent (Essex County), and including authority to traverse only the following connecting highways: New York Highway 148 from Fonda to Johnstown; New York Highway 29 from Johnstown to Saratoga Springs; New York Highway 67 from Amsterdam to Ballston Spa; New York Highway 7 from Watervliet to Schenectady; New York Highway 50 from Schenectady to Saratoga Springs, in-

cluding service, however, to the Village of Ballston Spa; and New York Highway 28N from Long Lake to North Creek, including service however, to the off-route point of Tahawus (Essex County).

HEARING: Date, time, and place assigned for hearing application, not known at this time.

Requests for procedural information, including the time for filing protests, concerning this application should be addressed the New York Public Service Commission, 55 Elk Street, Albany 1, N.Y., and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 63-11726; Filed, Nov. 5, 1963;
8:46 a.m.]

[Notice No. 893]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 1, 1963.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 65753. By order of October 29, 1963, the Transfer Board approved the transfer to Arrow Moving & Storage, Inc., Salem, Oreg., of certificate in No. MC 110883, issued November 23, 1954, to Robert H. Dolezal and M. Judson Baker, a partnership, doing business as Arrow Pick-Up and Moving Service, Salem, Oreg., authorizing the transportation of: General commodities, except those of unusual value, class A and B explosives, commodities in bulk, and those requiring special equipment, between Salem, Oreg., and Tillamook, Oreg., serving all intermediate points and between Salem, Oreg., and junction Oregon Highways 22 and 18, at or near Willamina, Oreg. Roy Harland, Post Office Box 787, Salem, Oreg., attorney for applicants.

No. MC-FC 66186. By order of October 29, 1963, the Transfer Board approved the transfer to Wilkins Transport

Limited, a corporation, Chatham, Ontario, Canada, of certificate in No. MC 116519, issued November 1, 1957, to Leonard Wilkins, Bothwell, Ontario, Canada, authorizing the transportation of: Agricultural machinery, implements and parts which do not require the use of special equipment for loading, unloading, or the transportation thereof, from Coldwater, Ohio, to the United States-Canada boundary line at or near Detroit and Port Huron, Mich. S. Harrison Kahn, 733 Investment Building, Washington, D.C., attorney for applicants.

No. MC-FC 66211. By order of October 29, 1963, the Transfer Board approved the transfer to Richard A. Thomas, doing business as Bronx Despatch, New York, N.Y., of certificate in No. MC 30498, issued May 23, 1956, to Harry Davis and Richard A. Thomas, a partnership, doing business as Bronx Despatch, New York, N.Y., authorizing the transportation of: General commodities, with the usual exceptions including household goods and commodities in bulk, between New York, Yonkers, White Plains, Scarsdale, Port Chester, Mt. Vernon, and New Rochelle, N.Y., Somerville, Chatham, Madison, and Morristown, N.J., points in Bergen, Essex, Hudson, Middlesex, Passaic, and Union Counties, N.J., and those in Nassau and Suffolk Counties, N.Y. William D. Traub, 10 East 40th Street, New York 16, N.Y., representative for applicants.

No. MC-FC 66231. By order of October 29, 1963, the Transfer Board approved the transfer to Motor City Cartage Company, a corporation, Detroit, Mich., of certificate in No. MC 119366, issued February 29, 1960, and the interstate operating rights claimed under the "grandfather clause" of section 206(a) (7) (b), by Albert N. Scott, Estelle E. Scott, and Richard L. Scott, a partnership, doing business as Motor City Cartage Company, Detroit, Mich., authorizing the transportation of: Fresh and cured meats, butter, butterfat, buttermilk, cheese, cream, eggs, lard or shortening, milk, oleomargarine, poultry dead, dressed, and rabbits, dead; between Detroit, Mich., on the one hand, and, on the other, points in Michigan within 60 miles of Detroit. Wilhelmina Boersma, 2850 Penobscot Building, Detroit 26, Mich., attorney for applicants.

No. MC-FC 66320. By order of October 30, 1963, the Transfer Board approved the transfer to Brawley Transfer Co., Inc., Statesville, North Carolina, of certificate in No. MC 29076, issued by the Commission March 19, 1941, to J. Mott Brawley, doing business as Brawley Transfer Company, Statesville, N.C., authorizing the transfer, over irregular routes, of new furniture and veneering, from Statesville, N.C., to Martinsville, Va., Hagerstown, Md., Pittsburgh, Pa.,

and points in that part of Pennsylvania, Maryland, Ohio, and West Virginia within 100 miles of Pittsburgh, and of glass, from Ford City, Pa., to Statesville, N.C. Neil S. Sowers, North Carolina National Bank Building, Statesville, North Carolina, attorney for applicants.

No. MC-FC 66325. By order of October 29, 1963, the Transfer Board approved the transfer to Ralph R. Tibbits, doing business as Andrews Brothers, Morrisville, Vt., of certificate in No. MC 37095 (Sub-No. 1), issued June 21, 1946, to Foster I. Andrews, doing business as Andrews Brothers, Morrisville, Vt., authorizing the transportation, over irregular routes, of: Household goods as defined by the Commission, between points in Vermont, on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. George A. King, Morrisville, Vt., attorney for applicants.

No. MC-FC 66348. By order of October 29, 1963, the Transfer Board approved the transfer to Robert Voeltz, Emerald, Wis., of the operating rights issued by the Commission August 7, 1957, under certificate in No. MC 24869, to Russell DeBoer, Emerald, Wis., authorizing the transportation of livestock, over irregular routes, between Glenwood City, Wis., and points within 15 miles thereof, on the one hand, and, on the other, South St. Paul, and Newport, Minn.; from points in Forest, Emerald, and Glenwood, St. Croix County, Wis., and New Haven, and Tiffany, Dunn County, Wis., to Newport, and South St. Paul, Minn.; from New Richmond, and Deer Park, Wis., and points in Glenwood, Forest, Springfield, Emerald, Cylon, Baldwin, Erin Prairie, Hammond, and Richmond, St. Croix County, Wis., and Stanton, Tiffany, New Haven, and Hay River, Dunn County Wis., with exceptions; general commodities, with exceptions, from South St. Paul, St. Paul, Minneapolis and Stillwater, Minn., to Deer Park, Wis., and points in various towns in St. Croix County, Wis., and Stanton, Tiffany, New Haven, and Hay River, Dunn County, Wis., except specified incorporated municipalities; well drilling supplies, from Minneapolis, and St. Paul, Minn., to points in 5 counties in Wisconsin; flour, feed, and feed mill products, from New Prague, Minn., to Glenwood City, Wis.; and animal and poultry feed, from Minneapolis, St. Paul, and South St. Paul, Minn., to Glenwood City, Wis. A. R. Fowler, 2288 University Avenue, St. Paul 14, Minn., representative for applicants.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 63-11727; Filed, Nov. 5, 1963;
8:46 a.m.]

CUMULATIVE CODIFICATION GUIDE—NOVEMBER

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

MILK IN PHILADELPHIA, PA., AND
WILMINGTON, DEL., MARKETING
AREAS

Decision on Proposed Amendments to
Tentative Marketing Agreements and
Orders

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1004, 1010]

[Docket Nos. AO-160-A25, AO-160-A26, AO-276-A5, AO-276-A6]

MILK IN THE PHILADELPHIA, PA., AND WILMINGTON, DEL., MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Milk in the Philadelphia, Pennsylvania, and Wilmington, Delaware, marketing areas (to be newly designated as "Delaware Valley Marketing Area"):

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), public hearings were held at Philadelphia, Pennsylvania, March 5-April 2, 1963, and September 13-14, 1962, pursuant to notices thereof issued on November 20, 1962 (27 F.R. 11673); November 30, 1962 (27 F.R. 11999); February 26, 1963 (28 F.R. 2009) and August 15, 1962 (27 F.R. 8380).

Upon the basis of the evidence introduced at such hearings and the records thereof, the Assistant Secretary of Agriculture on September 30, 1963 (28 F.R. 10646; F.R. Doc. 63-10506) and June 7, 1963 (28 F.R. 6171; F.R. Doc. 63-6221) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decisions containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decisions (28 F.R. 10646; F.R. Doc. 63-10506 and 28 F.R. 6171; F.R. Doc. 63-6221) are consolidated into this final decision and are hereby approved and adopted as if set forth in full herein subject to the following modifications (The material issues 3 through 6 above were previously set forth as issues 1 through 4, respectively, in the decision issued June 7, 1963 (28 F.R. 6171)):

Issues 1 through 2(e) (Hearing March 5-April 2, 1963):

1. Under issue No. 2 *Terms and provisions of the order* the first paragraph is changed and the second and third paragraphs deleted.

2. Under issue No. 2(b) *Milk to be priced and pooled* a new paragraph is added after the second and after the fifth paragraphs.

3. Under issue No. 2(c) *Classification of milk* the first paragraph is changed and a new paragraph is added after the last paragraph.

4. Under issue No. 2(d) *Class I milk pricing factors* the first and second paragraphs are changed.

5. Under issue No. 2(e) *Administrative and miscellaneous changes* two new paragraphs are added after the last paragraph.

6. Immediately preceding the paragraph headed *Rulings on proposed findings and conclusions* a new subtitle and three new paragraphs are added.

Issues 3-6 (Hearing September 13-14, 1962):

7. Under issue No. 3 (issue No. 1-28 F.R. 6171) the second, ninth and sixteenth paragraphs are changed and a new paragraph is added after the nineteenth paragraph.

8. Under issue No. 4 (issue No. 2-28 F.R. 6171) the third and eighth paragraphs are changed and the ninth paragraph is deleted.

9. Under issue No. 5(a) (issue No. 3(a)-28 F.R. 6171) the fifth paragraph is deleted.

10. Under issue No. 5(b) (issue No. 3(b)-28 F.R. 6171) the eighth and ninth paragraphs are deleted; the tenth paragraph is changed; the eleventh paragraph and all the material under the hearing (i) Transfers from an unregulated supply-type plant to a regulated distributing-type plant are changed; the paragraphs designated (iii) are deleted and the paragraph designated (iv) is redesignated (iii); and the paragraph immediately preceding issue No. 5(c) (issue No. 3(c)-28 F.R. 6171) is deleted.

11. Under issue No. 5(c) (issue No. 3(c)-28 F.R. 6171) the second and fourth paragraphs are changed.

12. Under issue No. 6 (issue No. 4-28 F.R. 6171) the first, third, fifth, seventh and tenth paragraphs are changed.

The material issues on the record of the March 5-April 2, 1963, hearing relate to:

1. Extension of the marketing area and merger of Orders No. 4 and No. 10;
2. Appropriate terms and provisions of the order with respect to:

(a) The distribution of returns to producers on a marketwide or individual-handler pool basis;

(b) Milk to be priced and pooled;

(c) Classification (including transfers) and allocation of milk;

(d) The method of determining the Class I price and the application of location differentials; and

(e) Administrative and miscellaneous provisions.

The material issues on the record of the September 13-14, 1962, hearing relate to:

3. Modification of order provisions which apply to milk disposed of in other Federal order markets by Philadelphia and Wilmington handlers;

4. Incidence of order provisions on any plant qualified both as a "producer milk plant" under the Philadelphia order and as a fully regulated plant under the provisions of another Federal order;

5. Allocation of milk from various sources to classes of utilization; and

6. Classification and assignment of certain uses of milk.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Extension of the marketing area and merger of Orders No. 4 and No. 10.* The marketing area of Order No. 4 should be extended to include all territory in

the State of New Jersey not now included in the New York-New Jersey (Order No. 2) marketing area. (This area of proposed extension is hereinafter referred to as southern New Jersey.) In addition, the Wilmington (Order No. 10) and the Philadelphia (Order No. 4) marketing orders should be merged. This combined area of regulation as herein recommended should be designated the "Delaware Valley marketing area".

The southern New Jersey area here under consideration includes all territory in the State of New Jersey within the boundaries of the counties of: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean (except the boroughs of Bay Head, Beachwood, Island Heights, Lakehurst, Lavallette, Mantoloking, Ocean Gate, Pine Beach, Point Pleasant, Point Pleasant Beach, Seaside Heights, Seaside Park, South Toms River, and the townships of Berkeley, Brick, Dover, Jackson, Lakewood, Manchester, and Plumsted) and Salem.

The existing marketing area of Order No. 4 includes Philadelphia and Delaware Counties together with portions of Montgomery and Bucks Counties, all in Pennsylvania. The Order No. 10 area includes that portion of New Castle County, Delaware, lying north of the Chesapeake and Delaware Canal.

Federal regulation of southern New Jersey was proposed by the three principal cooperative associations supplying milk for distribution in that area. The primary handlers in southern New Jersey joined the proponent cooperatives in supporting regulation of southern New Jersey.

State milk control has been in effect in the State of New Jersey since 1933. The New Jersey Office of Milk Industry, which administers the State regulation, has established both minimum producer and resale prices. However, because of the inability of the State to enforce minimum producer prices on milk received from out of State and because of the location of the State in relation to milk producing areas in Pennsylvania, Delaware, Maryland, and New York, many handlers secure all or a major part of their supplies outside the jurisdiction of the Office of Milk Industry at prices unrelated to and substantially below those established under the New Jersey regulation. In some cases the outside milk is priced under the Philadelphia, Wilmington, or New York-New Jersey Federal orders and in other cases the milk is not priced under any regulation.

In addition, the New Jersey regulation permits the purchase of milk from producers under a "norm and excess" plan. The delineation and modification of the "norms" are made by the purchasing handler with approval of producers. Excess milk is priced under the State regulation as surplus milk regardless of use. Hence, handlers have had the ability to secure some low priced milk for Class I use even from local New Jersey producers.

The permanent population of southern New Jersey is approximately 1.4 million people. Much of the area is highly ur-

banized and/or industrialized, and since population density is rapidly increasing milk sales in the area have also been increasing. However, a diminishing proportion of such milk sales are being supplied by New Jersey dairymen.

In 1942 dairy farmers in southern New Jersey produced 77 percent of the milk needed for Class I purposes. In 1961 such dairy farmers produced only 34 percent of the Class I requirements of the area. Currently, there are about 270 New Jersey producers shipping milk to 34 non-federally regulated handlers in southern New Jersey. In addition, a substantial number of southern New Jersey dairy farmers deliver their milk to regulated plants under the Philadelphia, Wilmington, or New York-New Jersey Federal orders.

Class I sales of fluid milk products in southern New Jersey are approximately 35 million pounds per month with a seasonal peak in August. The seasonal increase in sales is due to the summer population increase at seashore resorts. It is estimated that 700,000 persons take up temporary residence at the resort area.

The Class I distribution within the area is made by 56 handlers. Ten of these handlers are regulated by Federal Order No. 2 (New York-New Jersey marketing area); 12 by Order No. 4 (Philadelphia, Pennsylvania, marketing area) or Order No. 10 (Wilmington, Delaware, marketing area); and 34 are not regulated by any Federal order. The 10 Federal Order No. 2 handlers distribute approximately 7 percent of the total Class I sales in southern New Jersey. However, 85 percent of these southern New Jersey sales are in Mercer County, immediately adjacent to the present New York-New Jersey marketing area. The fluid milk sales of Order No. 2 handlers in Mercer County represent about 40 percent of the total sales in the county. The 12 handlers regulated by Order No. 4 or Order No. 10 distribute approximately 40 percent of the total Class I sales in southern New Jersey. Thirty of the 34 unregulated handlers average less than 10,000 quarts of Class I disposition per day. In addition, there are reported to be 19 producer-handlers selling milk in this southern New Jersey area.

Most of the 12 handlers regulated by Order No. 4 or Order No. 10 distributing in southern New Jersey have routes extending throughout the entire area.

The Order No. 4 and No. 10 regulated handlers operate plants located in Trenton, Camden and Philadelphia. These handlers have retail and wholesale routes extending throughout the South Jersey marketing area. Bottled milk from the plants mentioned above is delivered to depots in the Atlantic City, Trenton, Hammonton and Wildwood areas. Two of these handlers have route sales extending into the Order No. 2 marketing area. The Order No. 2 regulated handlers distribute milk on routes along the fringe areas of Order No. 2, mostly in Mercer County and to a limited extent in other areas.

Three of the handlers not regulated by Federal orders distribute in a substantial portion of the area.

An unregulated plant located in Atlantic City distributes milk on retail and wholesale routes in Vineland, Bridgeton and Cape May. A plant in Bridgeton has retail and wholesale routes extending from Bridgeton to Camden. A plant in Burlington County has retail and wholesale routes servicing Trenton, Camden, Long Beach Island and Bridgeton. The sales distribution of the remaining handlers is primarily local in character.

While an unstable marketing situation has existed in southern New Jersey for an extended period of time, the situation became acute in October of 1962 when, because of certain changes in the regulations of the Office of Milk Industry of the State of New Jersey, handlers in southern New Jersey notified their dairy farmers that after 60 days (such notice is required under the New Jersey regulation) they would discontinue the purchase of milk from such dairy farmers. The reason given by the dealers for this action was that milk could be purchased cheaper from out-of-State sources. During the early part of December 1962 the Office of Milk Industry cancelled for a period of 180 days the action taken in October. Official notice is taken of a subsequent announcement by the Office of Milk Industry extending such cancellation for an additional 180-day period. As a result of these actions by the Office of Milk Industry, handlers have not carried through their expressed intent of laying off local producers.

New Jersey producers delivering to local handlers do not have a secure market for their milk. The situation in southern New Jersey constitutes a continuing threat to a dependable supply of pure and wholesome milk in that area. Federal regulation is the only appropriate means by which orderly marketing may be assured and such regulation will tend to effectuate the declared policy of the Act. A classified pricing plan based on audited utilization of all handlers will provide a uniform pricing system for milk and assure a fair division of returns among all producers who sell in this market. The public hearing procedure required by the Agricultural Marketing Agreement Act will provide opportunity for representatives of producers, handlers, and to the public to present information on marketing conditions and participate in the determination of prices for milk in the marketing area.

The extended marketing area should include also the area now under regulation by Order No. 10. Extension of the Philadelphia marketing area to include southern New Jersey will bring under regulation of that order the largest plant now regulated under the Wilmington order. The proximity of this area to and interrelationship with the Philadelphia market and the southern New Jersey area suggests a single regulation. This action was proposed and generally supported at the hearing by three principal cooperatives representing producers in the Philadelphia and Wilmington markets and in southern New Jersey, and by the Philadelphia Milk Dealer's Association. Handlers regulated under the Wilmington order opposed any change in the Class I price applicable to Wilmington plants if the orders were merged. The

price issue is discussed later in this decision.

The several health regulations governing the production and sale of milk in the expanded marketing area as herein recommended are essentially similar. Several handlers now regulated by Order No. 4 distribute milk in the existing Order No. 10 marketing area and in southern New Jersey. Several Order No. 10 handlers distribute generally in southern New Jersey and in the Philadelphia marketing area. The processing and bottling plants of several regulated handlers (both Order No. 4 and Order No. 10) are located in southern New Jersey and such handlers distribute generally in southern New Jersey as well as in the presently defined marketing areas.

It is concluded that a single order is needed to regulate the handling of milk in the present Philadelphia and Wilmington marketing areas and in southern New Jersey. It should be designated the "Delaware Valley marketing area" in recognition of the general geography and location of the area.

Order No. 4 handlers proposed further extension of the marketing area to include 64 additional townships and 7 boroughs in Bucks, Montgomery, and Chester Counties, Pennsylvania. In general, the proposed addition would encompass all territory outside the existing marketing area in which present Order No. 4 handlers with membership in the Philadelphia Milk Dealer's Association do business.

In support of their proposal proponents relied upon a previous decision of the Secretary which raised a question as to the appropriateness of the then existing marketing area.

Presently regulated Order No. 4 handlers do a substantial business in the area of requested extension, approaching 60 percent of the total as estimated from population and average consumption figures. Nevertheless, the proportion of the total business done by such handlers in the several townships and boroughs varies substantially by locality. The evidence submitted is insufficient to determine the patterns of distribution of the presently unregulated handlers in the area, or to establish with assurance which, and how many, new handlers would be brought under regulation if only segments of the proposed area were included.

The area in question is regulated under orders issued by the Pennsylvania State Milk Control Commission and the Class I price under such orders substantially exceeds the Class I milk price under the Federal order. While proponents allege that presently nonfederally regulated handlers have a pricing advantage, they offered no substantive evidence in support of their position. They base their position on the fact that some unregulated handlers carry a greater variety of products and sell at the Pennsylvania Milk Control Commission minimum resale prices rather than the higher price at which Order No. 4 handlers sell. The advantage they contend results from the unregulated handler's ability to secure milk unpriced by either Federal or State orders. In fact, however, proponents were unable to substantiate that

any unregulated competitor in this area was buying any milk not fully priced under the State orders.

Producers did not support the proposed extension. One cooperative association (which operates a plant fully regulated under either the New York-New Jersey or Philadelphia orders depending upon the utilization and distribution of milk by such cooperative), with a large number of its membership located within the proposed area of extension and also with substantial Class I distribution in this area, opposed the extension. The spokesman for the cooperative association contended that there is no evidence of disorderly marketing and that Order No. 4 handlers are not disadvantaged in competing with local handlers.

A cooperative association representing the majority of producers under the existing Wilmington order proposed that the marketing area of the combined order be further extended to include the remainder of the territory in the State of Delaware. However, proponent did not support the proposal. The addition was supported by several regulated handlers, who contended that they do substantial business in this unregulated area and that extension of regulation would provide assurance that their competition has no procurement advantage. The handler spokesman could not say whether regulated handlers' sales in the proposed area of extension had increased or decreased since the promulgation of the Wilmington order nor could he substantiate that his unregulated competitors have any actual procurement advantage.

Under such circumstances there is no apparent need for the proposed extensions and the requests for inclusion of such additional areas are denied.

2. Terms and provisions of the order. The terms and provisions of the existing Philadelphia and Wilmington orders are essentially similar. Both producers and handlers proposed that the Philadelphia order, with specified exceptions, be adopted as the appropriate regulation covering the expanded (Delaware Valley) marketing area. This procedure is adopted herein and, except as specifically discussed in the decision, the provisions of the existing Philadelphia order are concluded from the record to be the appropriate terms and provisions of the merged and extended order.

Likewise, the findings and conclusions made in this decision with reference to the Philadelphia and Wilmington orders apply equally to the proposed regulation covering the marketing area as extended. The record of the hearing held September 13-14, 1962, was incorporated by reference as part of the record of the hearing held March 5 through April 2, 1963, and the findings and conclusions and order provisions of the recommended decision issued June 7, 1963, with noted modifications, were made a part of the recommended decision of September 30, 1963, on the record of the March 5-April 2, 1963, hearing.

(a) *Distribution of returns to producers.* The method of distributing returns to producers should not be changed at this time.

The Act provides a choice of two methods of pooling returns to producers. One is the marketwide pool, the other is the individual-handler pool. In an individual-handler pool, the total money value of all milk delivered by all producers to each individual handler (pounds of milk in each class, multiplied by the minimum class prices with adjustment for butterfat and location differentials) is divided by the total amount of milk which is delivered by producers to such handler. All producers supplying such handler are paid a "uniform", or "blend", price per hundredweight. The proportions of milk used in the respective classes vary among handlers and therefore while producers supplying each handler receive a single uniform price for milk of similar quality and butterfat content, the uniform prices as among handlers vary.

Under a marketwide pool the total money value of all milk received by all handlers is combined into one marketwide pool and the total value is divided by the total amount of producer milk which is to be priced. All producers in the market are paid the same "uniform", or "blend", price per hundredweight for their milk, except for specified adjustments provided by the statute.

Both the Philadelphia and Wilmington orders have, since their inception, provided for individual-handler pooling. Under the individual-handler pooling arrangements, certain handlers have historically maintained essentially only Class I use and hence a blend price closely approximating the Class I price. Other handlers, particularly those with manufacturing operations in conjunction with their fluid milk operations, have substantial Class II utilization and hence return to their producers a blend price significantly below that of handlers maintaining only Class I operations. As a consequence producers in these markets are accustomed to variations in blended prices as among handlers.

Both local cooperative spokesmen and handlers supported individual-handler pooling. It was their position that individual-handler pooling had accommodated the Philadelphia and Wilmington markets and was appropriate for the proposed regulation. They contended that competition among producers for outlets with high utilization handlers was a substantial incentive for continuing the production of quality milk and was in the general interest of both producers, handlers and the public.

Four proposals were made for a change to marketwide pooling. Three of these proposals were from interests in the adjacent New York-New Jersey market and the fourth was by a Philadelphia handler who, in addition to his fluid milk business, operates a separate plant manufacturing Italian-type cheese. The latter proponent offered no testimony but did bring in producer and dairy farmer witnesses who testified generally that they had had difficulty finding a market for their milk and believed that under the existing market situation they would have a more secure market under marketwide pooling.

The New York-New Jersey order proponents for marketwide pooling were in-

clined to blame the present Philadelphia individual-handler pool for part of the large reserve milk supply carried in the New York-New Jersey pool. They contended that because of individual-handler pooling the Philadelphia market does not carry its fair share of the regional reserve, and further, that Philadelphia handlers refuse milk which for lack of other outlets finds its way to the New York-New Jersey pool.

In support of their position proponents offered statistics on producer movements which purported to show that while there were shifts of producers in both directions (Philadelphia to New York-New Jersey and vice versa) the preponderance of such shifting was out of the Philadelphia market. In fact, however, the far greater number of producers added by Order 2 handlers from the overlapping Pennsylvania production area of the two markets were new producers or producers formerly associated with local plants not regulated under any Federal order.

While the data clearly indicate that producers have been added to Order 2 in significantly greater numbers than to Order 4 (and this could be argued as evidence that Philadelphia does not carry its proportionate share of the reserve supply), the reasons for this situation must be closely examined.

It is clear in certain cases brought out on the record that some Philadelphia handlers have laid off some producers. It is equally clear that producers without a market have difficulty in finding a ready outlet in the Philadelphia market. However, the individual-handler pooling system has functioned to maintain orderly marketing in the area.

The New York-New Jersey order is unique among the large number of Federal orders. Historically, plants have been able to associate their supply of milk with the "pool" through the "regular" pool plant provisions without shipment of any milk to the fluid market. In this manner plants have been added to the pool with permanent pooling status. As a consequence, for many years there have been strong incentives for actively encouraging dairy farmers to enter that market.

The New York-New Jersey market has been slow in comparison to the Philadelphia and Wilmington markets in shifting to farm bulk tanks. Can shippers generally have found a ready market, at New York-New Jersey plants, and hence, when confronted with the cost of a farm bulk tank as a condition of holding their present market producers frequently elect to shift markets. This obviously has been the predominate reason for the shifting of individual producers from Philadelphia and Wilmington markets to the New York-New Jersey market.

The individual-handler pooling arrangement has accommodated the Philadelphia market since the inception of the order and is supported by most producers and handlers. Pooling does not affect handlers' costs of milk but rather is a mechanism for distributing returns to producers. It is not apparent at this time that there are compelling problems resulting from individual-handler pool-

ing which require a different pooling arrangement for the Delaware Valley market. Accordingly, it is concluded that the individual-handler pooling should be provided at the outset of the new regulation.

Notwithstanding this conclusion, there is some question whether the individual-handler pooling arrangement can be expected to accommodate the expanded market for an extended future period. In recent years several plants operated by cooperative associations and located beyond the normal boundaries of the milkshed have been brought under regulation of the Philadelphia order. The milk from these plants has essentially a Class I market, while regular Philadelphia producers, more favorably located, have either lost their market with Philadelphia handlers or have had their blend price materially reduced. Under the terms of the order, milk from these distant plants has not had a pricing advantage over local producer milk. Hence, it is not clear why such distant sources of supply have been sought by handlers in lieu of using available local supplies. However, had there been a marketwide pool, the prospects of a market blend price as compared to essentially a Class I price return, might well have resulted in a decision on the part of such cooperatives not to place their plants under the Philadelphia order.

The principal bargaining cooperative in the market has arrangements with several Philadelphia handlers whereby the cooperative is responsible for disposing of milk in excess of the handlers' fluid requirements. The cooperative collects payment from such handlers for milk physically delivered and these proceeds are rebled with the monies received from the disposition of the surplus milk. The cooperative then pays the individual producers. The milk marketed by the cooperative is not "producer milk" under the terms of the order and hence is not included in the blended prices computed by the market administrator for such handlers. The producers involved, in reality, receive a return substantially different from the blended prices announced for such handlers. The volume of milk involved approaches a million pounds per month. While this arrangement presently involves only three handlers, there is a strong probability that the cooperative may find it necessary to extend this service to other handlers, particularly if the present general supply situation continues.

This same cooperative, with some New Jersey members shipping to an Order 4 plant and others to the same handler's unregulated plant in New Jersey, has found it desirable to collect the proceeds from the sale of such milk at the two plants and pay one uniform price to these New Jersey members. In addition, this cooperative has members, who are qualified or who could readily qualify to ship fluid milk, delivering their milk to a nonregulated manufacturing plant. While the financial arrangement for paying such members for their milk is not known, producers qualified to ship to a fluid market may not be expected to be satisfied over any extended period of time with a manufacturing milk price.

The Delaware Valley market is a far more complex market than the Philadelphia market was ten to fifteen years ago. Today ten cooperative associations represent about two-thirds of the producers, none of the cooperatives, however, represent a majority of the total number of producers. Milk is received from distant plants and delivered in packaged form over an extensive marketing area. In this complex market handlers still do not transfer milk from one to another as supply and demand for fluid milk products vary. A spokesman for one cooperative association did imply, however, that with the advent of bulk tank milk on farms milk may be shifted between plants as the need for fluid milk products demands. It seems probable that as the market structure becomes more complex there will be increasing need for marketwide pooling to maintain orderly marketing in the Delaware Valley marketing area.

(b) *Milk to be priced and pooled.* Merging of the two regulations into a single order for an enlarged marketing area requires more specific delineation of the milk to be priced and pooled. This may be accomplished by redefining "producer milk plant", "producer", "producer milk" and providing new definitions of a "plant", "fluid milk product" and "route disposition".

The "producer milk plant" definition should be modified to include during any month of the year a plant from which a fluid milk product is supplied to a pasteurizing or bottling plant described in § 1004.8(a) any part of which is allocated to Class I milk pursuant to § 1004.47. Presently both Orders No. 4 and 10 have provisions allowing plants to make shipments of milk for Class I usage for ten days during certain months without becoming subject to regulation. The market is now adequately supplied with milk during all months of the year. Therefore, the necessity of obtaining supplemental milk to supply the Class I needs of the market during the "short" season from plants not regularly associated with the market no longer exists. Accordingly, it is provided that any plant supplying milk to the marketing area in the form of fluid milk products, any part of which is allocated to Class I, should be subject to regulation by this order. This modifies the terms of the prior decision issued June 7, 1963.

As previously indicated, except as specifically discussed, it was intended that the terms and provisions of the existing Philadelphia order be the terms and provisions of this order. Notwithstanding this conclusion, the proposed language of the "producer milk plant" definition as set forth in the recommended decision provided that a multiple plant handler could establish two or more systemic operations. This language was excepted to by one of the proponent cooperatives for extension of regulation to southern New Jersey. Exceptor pointed out that such a provision would permit a multiple plant handler to shift plants back and forth between systems to the detriment of producers. Since the present provision has worked satisfactorily under both the Philadelphia and Wilmington orders, any reason for a handler desiring more than

one system would, or most likely, involve his New Jersey operations. Since New Jersey producers would be the most likely benefactors of the provision as recommended and were the sole exceptor, the definition has been modified to retain the single system designation.

The "producer" and "producer milk" definitions should be revised to allow unlimited diversion to another producer milk plant (except that of a producer-handler) or to nonproducer milk plants if the producer held producer status throughout the preceding month or the greater volume of his milk from the first day of delivery or diversion during the current month was physically received at a producer milk plant.

Under the existing supply situation it is desirable that individual handlers have full opportunity to move in the most economical manner milk not needed for fluid use. Since most of the milk is picked up at the farm in bulk tank trucks there is no longer any need to receive milk at a plant for cooling and assembly. Hence, diversion represents the most economical way of disposing of milk not needed at the plant of normal receipt. Some safeguards must be retained, however, to assure that diverted milk is a normal part of the handlers' supply for the fluid market. Diversions to unregulated plants should be limited to milk which has been associated with the market as producer milk during the entire preceding month or which is received at a producer milk plant during the current month in greater volume than is diverted. This limitation presently applies during the months of February through September under the provisions of Order No. 4.

It is also desirable that a handler be permitted to divert milk between two of his own producer milk plants. With the expansion of regulation several handlers will have additional bottling plants under the order. It is desirable that such handlers be permitted to move milk between their regulated plants with maximum efficiency. However, to preclude the possibility of associating milk with a plant having a location differential and subsequently regularly diverting such milk to another plant for the purpose of a pricing advantage, it is provided that milk diverted between plants of the same handler, for the purpose of computing location differential credits, shall be considered a receipt at the plant having the lesser differential.

Exceptions were filed to the conclusion that except in the case of diversions between two plants of the same handler under specified circumstances, diversions between producer milk plants would be priced at the location of the diverting plant. Exceptor suggested that extension of regulation to Southern New Jersey would bring under regulation new plants and handlers and that under the terms of the order a New Jersey handler might purchase milk from a distant plant which milk could be delivered by diversion directly from the farm at producers' expense and at a pricing advantage to the New Jersey handler.

It is not clear how the cost of delivery to New Jersey could be shifted to producers whose milk is associated with an-

other plant since producers have responsibility for delivering only to the plant of normal receipt, which under the terms of the order would be the diverting plant. While it is conceivable that producers might agree to an unwarranted hauling charge in exchange for a Class I market, any significant change in hauling deduction, even though agreed to by the producer, would not be allowed by the market administrator without thorough investigation and acceptable justification. Hence, there is no necessity for the change in pricing suggested by exceptors.

The addition of definitions of a "fluid milk product", a "plant" and "route disposition" makes no substantive changes in the applicability of order provisions but will provide greater clarity and specificity to the order provisions generally.

It was proposed that the definition of a producer-handler be restated. Specifically, the proposal would limit a producer-handler to purchasing supplemental milk from producer milk plants and would fully regulate any such handler when he exceeds Class I disposition of 20,000 pounds per month.

The order language contained herein provides that when a producer milk plant receives milk in the form of a fluid milk product some of which is allocated to Class I, then the plant supplying such milk becomes a fully regulated plant. Therefore, no possibility exists for a producer-handler to obtain unpriced fluid milk other than his own production for Class I usage. Under such circumstances there is no reason in an individual-handler pool market for placing a volume limitation on a producer-handler operation.

(c) *Classification of milk.* Under the classified use plan of a Federal order it is necessary to insure that all milk and milk products are fully accounted for by the handler who is responsible for accounting and reporting to the market administrator and for making payments to producers on receipts of producer milk. Accounting for milk and milk products on a skim milk and butterfat basis at each individual plant and pricing in accordance with the form in which or the purpose for which such skim milk and butterfat is used or disposed of as either Class I milk or Class II milk is the most appropriate means of securing complete accounting on all milk involved in market transactions.

Milk is disposed of in the market in a wide variety of forms, representing different proportions of skim milk and butterfat components of milk which may be greatly changed from the proportions of skim milk and butterfat as it is first received from producers. Uniformity in accounting between markets may best be accomplished by using the skim milk and butterfat method.

Essentially, market administrators use a skim milk and butterfat accounting approach in their verification procedure, regardless of whether or not such a system is spelled out in the order. The skim milk and butterfat accounting procedure herein provided adopts the procedure generally used in Federal order markets for verification of the receipts and utilization of milk and milk products

and will provide for uniformity in application of the accounting system to all handlers involved. In accounting for the receipts and utilization of milk, the existing Wilmington order provides for skim milk and butterfat accounting, while the Philadelphia order provides for product pounds and butterfat accounting which is a slightly modified form of skim milk and butterfat accounting. Since no substantial change in costs to handlers and in returns to producers will result, and most of the other Federal order markets use the skim milk and butterfat method of accounting, it is concluded that this method of accounting is more appropriate for the Delaware Valley marketing area.

The classification provisions of Orders No. 4 and No. 10 are essentially similar with the exception of the classification of milk shake mix and the classification of closing inventory. Since milk shake mix is generally similar to eggnog it is appropriate that it be classified as Class II milk (presently provided for in Order No. 4) in the same manner as eggnog.

Under the present Wilmington order ending inventory is classified as Class II milk while the Philadelphia order treats inventory variations as Class I milk. Handlers asked that ending inventory be treated as a Class II item while producer cooperatives favored the present Philadelphia provisions. As was pointed out by handlers, the quarterly pricing system used for pricing Class I milk results in considerable fluctuations in such prices as between quarters while the Class II milk price remains relatively constant. A handler may experience a pricing disadvantage when inventory variations are classified as Class I milk and the Class I price drops. Also, a handler may experience a pricing advantage on such inventory when the Class I price increases. To deter handlers from manipulating inventories for a pricing advantage and to insure that producers receive the appropriate Class I price for milk disposed of for Class I milk use it is desirable that ending inventories be classified as Class II milk and reclassified as Class I in the following month if allocated to Class I milk.

It was proposed by a cooperative association whose membership is primarily among New York-New Jersey producers that cream and cream products for fluid use be classified as Class II milk and that a new Class III milk be established to include other products and uses presently included as Class II milk. The purpose of the proposal was to provide higher pricing for cream products disposed of for fluid uses which would more closely approximate the pricing of such products in the New York-New Jersey market.

Proponent in making the proposal had not considered the structure of the Philadelphia market or the fact that it is an open cream market. The existing Class II milk classification and pricing of cream in both Philadelphia and Wilmington appropriately reflects the competitive value of cream in the market and accordingly the proposal for a higher pricing on cream for fluid uses is denied.

Handlers excepted to the failure of the recommended decision to provide a Class

II classification and pricing for fluid milk products with a butterfat content between 6 and 18 percent. They contend that the only product within this range of butterfat content is "half and half" which normally has a butterfat content of approximately 10 percent and that under a Class I pricing half and half cannot be sold competitively with substitute products made from nonfat dry milk and vegetable fat. Producers on the other hand took the position that there is no significant difference in the pricing of butterfat in Class I and Class II and that a change to the lower classification would affect only the skim milk value. They suggested that half and half even under a Class II pricing would not be competitive with substitute products using vegetable fat and hence a lower pricing could not be expected to substantially affect sales of half and half, but would merely result in lowering of returns to producer.

Since skim milk and butterfat disposed of as half and half is subject to the same quality production requirements as other products in Class I by each of the respective health authorities having jurisdiction in the marketing area, there is no basis on this record for a lower classification and pricing.

(d) *Class I milk pricing factors.* The method of determining the Class I milk price, including the butterfat differential, and the application of location differentials to handlers and producers should be revised. The revised Class I milk pricing provisions should be effective only through June 30, 1965. The revision of these provisions are limited to (a) the substitution of the average price for milk for manufacturing purposes, f.o.b. plants, United States, as reported by the Department of Agriculture for the Midwestern condensery price series presently used in computing the basic level of the Class I milk price pursuant to § 1004.50 (a)(1)(iv) of the Philadelphia order, and (b) the computation of the index of average daily Class I milk disposition and the supply-demand adjustment on the basis of receipts and disposition of fluid milk products from plants fully regulated as a result of their sales in the presently constituted regulated marketing areas.

The level of the Class I milk price and alignment of this price with other markets in the Northeast was the subject of a public hearing held in New York City, May 6-23, 1963. Therefore, in respect of any decision resulting from the aforementioned hearing, no action is being taken on the proposals to revise the existing seasonality of the Class I milk pricing or the removal or revision of the provision limiting the level of the Class I milk price in relation to the Midwestern milk price.

One of the factors presently used in determining the level of the Class I milk price is an index of prices paid dairy farmers delivering to a selected group of Midwestern condenseries. There are now only seven Midwestern condenseries reporting to the Department of Agriculture the prices paid their dairy farmers. At the present time the average price for milk for manufacturing purposes, f.o.b. plants United States is used as a

basis of determining the Class II milk price under the Philadelphia and Wilmington orders. This manufacturing milk price has a broader base than the currently used condensery price and more accurately reflects the value of milk for other than Class I use. It is concluded that this price, now used in Order 4 to determine the Class II milk price (§ 1004.50(b)(1)), more appropriately represents the value of milk for this purpose and, therefore, should be substituted for the condensery price series as one of the indices of prices used in computing the basic level of the Class I milk price.

In adopting the price of manufacturing milk in lieu of the condensery price in § 1004.50(a)(1)(iv), it is appropriate to use a base period of 1961-62 for the purpose of computing an index of prices of milk used for manufacturing purposes. During the 1961-62 period these prices were almost identical whereas in 1957-58 they varied by more than 10 cents per hundredweight.

During the two-year period 1957-58 the condensery average price was \$3.067. The average value of manufacturing milk, as presently determined pursuant to § 1004.50(b)(1) of the Philadelphia order, for this two-year period was \$2.959. For the two-year period, January 1961-December 1962, the condensery price averaged \$3.096 while the manufacturing price averaged \$3.0707. Using a base period of 1961-62 for this index will result in no significant effect on the price through this change.

Further, a new seasonal index of prices for milk used for manufacturing should be computed based on the 1961-62 period. The substitution of these new factors, in the index of prices used to determine the basic level of the Class I milk price, would not have changed the level of the Class I milk price for the pricing quarters of April 1962 through July 1963. Thus, it is concluded that a factor of .030707, adjusted by the new seasonal adjustment factors, and applied to the monthly average price for milk used for manufacturing purposes (as determined pursuant to § 1004.50(b)(1)) will appropriately reflect, through the period June 30, 1965, the proper weight of value of such milk in the determination of the basic economic formula.

Since the numbers of producers, handlers, and volumes of milk that may be involved as a result of the expansion of the marketing area are not now known, the computation of an index as presently provided in § 1004.50(a)(1)(v) should be revised only to provide the same index that may have otherwise been computed had not the marketing area been expanded to include the southern portion of the State of New Jersey. This may be accomplished during the temporary pricing period through June 1965, by including in the computation of such index only the Class I milk disposition by those handlers whose route disposition in the marketing area exclusive of New Jersey makes them fully regulated handlers. Prior to the expiration of the Class I pricing provision in July 1965, it will be necessary that a further hear-

ing be held to determine the appropriate mechanism necessary to compute a Class I price index with respect to Class I sales in the expanded marketing area.

Similarly, in the computation of the supply-demand adjustor (pursuant to § 1004.50(a)(4) and (5)) the receipts of milk from producers at producer milk plants should be limited to plants fully regulated as a result of sales therefrom in the marketing area other than in the State of New Jersey.

The issuing of a determination order by the Assistant Secretary, effective on issuance, on March 6, 1962, provided for the use of wholesale price index for all commodities on a 1957-59 base divided by 0.8420462. The Bureau of Labor Statistics, United States Department of Labor, is now publishing the weekly wholesale price index with the years 1957-59 as the base and has discontinued publication of such index on a 1947-49 base. Therefore, in § 1004.50(a)(1)(i) the index of wholesale commodity prices, using a 1957-1958 base period, may be maintained by substituting the number, 0.99614, for the divisor, 1.183, and substituting the weekly index figures of wholesale commodity prices as presently reported on a 1957-59 base by the Department of Labor for the discontinued 1947-49 base.

The recommended order as hereinafter set forth provides for the announcement of prices on the basis of milk containing 3.5 percent butterfat content. Essentially all of the 83 Federal milk orders now in effect provide for the announcement of prices on a 3.5 percent butterfat basis. This use of a common basic butterfat test among all markets will assist in making regional and interregional price comparison and will thus tend to simplify business transactions among handlers, cooperative associations and other persons in the dairy industry. Producers located in common supply areas but who are associated with different markets will have a better understanding concerning the comparability of market prices. In addition, the preparation and analysis of statistical material concerning intermarket price relationships needed at public hearings and for other governmental and industry purposes will be facilitated. Comparable series of milk prices will be readily available for the Department's regular program for publishing dairy industry statistics. It is desirable therefore that price announcements under any order issued for the Delaware Valley marketing area conform with those of other regulated markets.

To implement the above conclusions the prices set forth in the Class I price schedule of § 1004.50(a)(2) are 14 cents below those contained in the similar provision of the present Philadelphia order, reflecting the value of two percentage points of butterfat (i.e., 3.5 vs. 3.7).

Several interested parties testified against any change from the announcement of prices on a 3.7 percent basis, contending that the average butterfat content of milk disposed of for Class I use was nearer 3.7 than 3.5 percent. A further concern expressed was that producers would be perplexed by a change to a 3.5 percent basis.

The announcement of prices on the basis of milk of 3.5 percent butterfat content will not change the level of class prices as currently provided in the existing Philadelphia order. The 3.5 percent prices, when adjusted by the appropriate butterfat differentials for milk of 3.7 percent butterfat content will result in the same price which the existing order provides.

Initially, the market administrator may also announce uniform prices for varying tests of milk. This practice is commonly followed by market administrators for the convenience of producers. Hence, there is no basis for concern that producers will be confused by a change from present basis of price announcements.

Handler Class I milk butterfat differential. The handler Class I milk butterfat differential should be revised to provide that such butterfat differential shall not be less than the butterfat differential provided for Class II milk. Under the present order provisions the Class I milk butterfat differential can be, and for a period of time has been, less than the Class II milk differential for butterfat. Prior to an amendment to Order 4, effective July 1, 1962, the butterfat differentials for both Class I and Class II were the same. Because the fluid milk products used for Class I milk must meet higher health standards than milk for manufacturing purposes, the value of butterfat in Class I milk under milk orders usually is priced at a higher level than for Class II milk. The Class II butterfat differential reflects the value of butterfat disposed of for manufacturing uses and there is no evidence that butterfat disposed of for Class I use has a lesser value. This conclusion may be implemented by retaining the present method of determining the Class I differential price of butterfat to handlers but with a qualifying condition that such differential price for Class I milk shall not be less than the differential price of butterfat classified as Class II milk.

Handler location adjustments. No location adjustment should apply at plants located less than 45 miles from the nearest of the City Halls in Philadelphia, Pennsylvania; Atlantic City or Trenton, New Jersey. The area thus circumscribed constitutes a homogeneous sales area in which the competition in procurement of milk among handlers requires the same Class I milk price level.

This location adjustment provision would result in no change in the application of location adjustments at plants presently regulated under Order No. 4. The present pattern of location price adjustments appears to be appropriate for plants now regulated under that order.

The adoption of Trenton and Atlantic City, New Jersey, as location basing points with no location adjustment for plants within 45 miles of such points will bring all unregulated plants (which would become regulated under this proposed regulation) located in New Jersey within the no-adjustment zone. Producers delivering to such plants have been receiving prices at least as high as those paid producers delivering to Phila-

delphia plants. Furthermore, they are located so that they have the opportunity to deliver milk directly to Philadelphia plants. Hence, there is no economic justification for establishing a Class I price at these plants which is below the Philadelphia Class I price.

Under the existing Wilmington order the Class I milk price at Wilmington plants is 15 cents less than the price at Philadelphia plants under the Philadelphia order. This proposed regulation would eliminate this price difference.

Wilmington is only 28 miles from Philadelphia. Although the record shows that producers whose milk was previously delivered to a Wilmington plant incurred a 7-cent increase in farm-to-plant hauling cost when their milk was shifted to a Camden plant there is no indication that the hauling cost to the Philadelphia-Camden plants is generally greater than the cost of hauling milk to Wilmington plants by the 15 cents difference in the Class I prices now provided. Producers delivering to Camden and to Philadelphia plants from the same area pay about the same hauling rate.

Handlers regulated under Order No. 4 joined handlers regulated under Order No. 10 in asking that a 15 cents lower Class I price be established for milk sold in the Wilmington area. They asked that the proposed lower price be applicable to milk sold in the Wilmington area even though such milk was received at plants located in Philadelphia and Camden. This proposal is denied.

Price adjustments for the location at which milk is delivered by producers promote the orderly movement of milk from farms to plants serving a common fluid milk market. Milk plants located in areas of excess milk production give producers the opportunity to save on their hauling costs as compared to producers in the same area who deliver to more distant plants near the market centers of milk consumption. This saving to farmers should be reflected in relative prices paid at different locations. Once producers have paid the cost to have their milk delivered to a milk plant, however, the price paid for that milk should not be reduced because a handler moved the milk to another area.

The provisions of the Philadelphia order prescribing the procedure for applying location differentials are appropriate for the merged and extended order. It is desirable, as previously indicated, in the interest of efficient handling that a multiple plant handler be permitted to receive milk at a plant other than the plant of normal receipt by diverting the milk directly from the farm. To preclude any pricing advantage which might accrue through associating milk with a distant plant but diverting it regularly to a plant with a lesser or no location differential, it is provided, for purposes of computing location differential credits only, that milk diverted between producer milk plants of the same handler shall be priced as though received at the plant having the lesser location differential.

(e) *Administrative and miscellaneous changes.* The provision relating to the announcement of the names and loca-

tions of all nonproducer milk plants supplying to a producer milk plant skim milk and/or butterfat during the preceding month, any part of which is allocated to Class I milk, should be deleted. Since any plant supplying a fluid milk product to a producer milk plant any part of which is allocated to Class I milk becomes subject to full regulation, the provision could no longer serve a useful purpose.

A producer cooperative proposed that the names and locations of all milk plants subject to other Federal orders from which Class I milk is disposed of on wholesale and retail routes in the marketing area also be announced each month. The present provision of the order requiring the announcement of nonproducer milk plants supplying Class I milk to the market is primarily to enable cooperative associations to have knowledge of a handler's need for milk. The mere fact that the names and location of Federal order plants which are supplying Class I milk to this market are divulged gives no clue as to the amount of milk or to whom such milk is being supplied. Since the information requested has little if any value in the placement of producer milk, the proposal is hereby denied.

With respect to the verification of handler reports by the market administrator, a producer cooperative association proposed using the terms of the existing Wilmington order. While the intent of this provision in the separate orders is the same, it is concluded that the records and facilities provision provided herein is more standard to other milk orders and more adequately describes a handler's responsibility in this regard.

To accomplish the merger of the Philadelphia and Wilmington orders effectively and equitably, administrative funds of the respective orders should also be merged and any debits or credits due from or to such funds under the individual orders should be paid from or to the fund so created.

Each handler should be required to pay the market administrator, as his pro rata share of the cost of administering the order, not more than two cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe on all receipts of producer milk (including such handler's own production). The recommended assessment is the same as the rate in the current Philadelphia order while the Wilmington handlers are currently assessed a maximum of five cents per hundredweight on such milk. The difference in the administrative costs between the two orders is a reflection of the difference in size of the two markets. A maximum assessment of two cents per hundredweight at this time should provide adequate funds for administration of the Delaware Valley order.

A proposal to change the administrative assessment to a "cost" basis is denied. The present rate of assessments as provided in the orders is a maximum one and may at the Secretary's discretion be decreased if the funds so provided are in excess of amounts needed

to properly administer the order. The present scheme of assessing each handler on the basis of volume of receipts is the most equitable means of distributing the cost of administration as among handlers.

Proponents proposed that handlers be required to pay premiums for milk received as "premium Grade A". The States of New Jersey, Pennsylvania, and Delaware health regulations require that such milk meet the same production standards as regular Grade A except with reference to maximum bacteria count, temperature, and butterfat requirements. The present Philadelphia order requires handlers to pay from 25 to 40 cents per hundredweight for this premium milk, while the Wilmington order makes no provision for like payments for this type of milk. These premium Grade A sales approximate three percent of total Class I sales of present Order 4. Handlers are not required to pay Grade A premiums on the total receipts of such milk, but only on the percentage of such Grade A receipts actually sold under a Grade A label. Only approximately 50 percent of the Grade A milk supplied by producers and eligible for a Grade A premium receives a premium price. Because of the small amount of milk involved and the fact that the order does not preclude premium payments by handlers, it is likely that a supply of premium Grade A which is adequate for the market's needs may more properly be obtained by negotiation between handlers and producers. Therefore, the special provision for "Grade A" milk now in Order 4 should not be included in the revised order.

It was proposed that the present definition of a cooperative association be revised to provide more definitive standards for qualification. The proposed revisions would require that such an association be one which is in good faith owned or controlled by the producers who are its members and further that such an association be precluded from selling milk of its patrons directly or indirectly at less than the order class prices or by granting anything of value to a handler or a customer of a handler.

The record does not disclose what existing problem proponents seek to relieve, or is it apparent that the proposed additional language would result in any change in procedure for the qualification of cooperative associations having member producers under the order. Under the definition as contained in the Philadelphia and Wilmington orders, which is essentially that contained in all Federal milk orders, a cooperative association must be a "Capper-Volstead" cooperative having full authority in the sale of its members' milk and engaged in making collective sales of or marketing milk or its products for the members thereof. The Act specifically provides (sec. 608c(5) (F)) that a cooperative association shall not sell milk or its products to any handler for use or consumption in any market at prices less than the price fixed under the order.

In addition, the payment provision of the present Philadelphia order, herein proposed to be adopted for the extended order, provides that handlers must pay

to a cooperative association which is a handler with respect to milk received from a producer milk plant operated by such cooperative the minimum class prices applicable at the location of the buying handler. Under the circumstance, there is no apparent justification for the requested revision of the cooperative association definition and the request therefore is denied.

Other changes in order provisions not specifically discussed are merely conforming changes necessary to implement the conclusions previously set forth herein.

Exception was taken to the recommended decision on the premise that recognition should be taken of the fact that current contracts to supply milk to government installations in and adjacent to the marketing area are firm contracts and hence individuals holding such contracts would be disadvantaged by any change in cost of milk resulting from the imposition of Federal regulation. Exceptors pointed out that such contracts currently approximate 50 percent of their total business and requested that milk disposed of under such contracts be exempted from the pricing provisions until termination of such current contracts.

It is entirely possible that a milk order regulation may affect or cut across existing contracts. This may be particularly true when an area is initially brought under regulation. However, milk marketing order regulations, having the force and effect of law, are issued in the public interest and supersede existing private contracts. The contracts in question were awarded on a competitive bid basis and handlers had full knowledge of the possibilities of regulation in southern New Jersey for an extended period of time, the hearing notices having been issued November 20, 1962 (27 F.R. 11673), November 30, 1962 (27 F.R. 11999), and February 26, 1963 (28 F.R. 2009) and the hearing having been held March 5 through April 2, 1963. The prices established by the order are identical to those proposed by proponents and set forth in the hearing notice. Hence, handlers in bidding on the current contracts had full knowledge of the possible imposition of regulation. Accordingly, the exceptors' request is denied.

Issues 3-6 (Hearing September 13-14, 1962):

The necessity for the September 13-14, 1962, hearing arose from problems created by the invalidation of compensatory payments under the New York-New Jersey Federal order by the United States Supreme Court in its June 4, 1962, decision in the case of *Lehigh Valley Cooperative Farmers, Inc., et al., Petitioners, v. United States et al.* (hereinafter referred to as the *Lehigh Valley-Suncrest case*). The problem of compensatory payments is concerned principally with those Federal order markets that contain provision for marketwide pooling. In the latter markets some system must be established which will permit handlers only occasionally, or incidentally, associated with the market to compete on reasonable terms with fully regulated handlers.

It is imperative when a market employing the individual-handler type of pool has close marketing relationships with a market or markets regulated by Federal milk orders which provide for marketwide type pools, that the respective orders be coordinated in their application, particularly as to persons doing business in both markets. Testimony presented at the hearing related principally to the coordination of the "producer" and "producer milk plant" provisions of the Philadelphia order with the provisions of other Federal orders, particularly with the pricing and pooling provisions of the New York-New Jersey order.

Under another decision, to amend the New York-New Jersey Federal order (28 F.R. 6139), the regulating provisions of such order would have significant application to certain handlers subject to the present Philadelphia and Wilmington orders (or proposed Delaware Valley order). Basically, these amendments would permit handlers, who otherwise would have their plants subject to full regulation under Order No. 2, to take certain alternative actions and thus avoid full regulation under the New York-New Jersey order. The amendments contained herein are such that the Delaware Valley order will permit coordination with the New York-New Jersey and other marketwide pool orders.

3. Modification of order provisions which apply to milk disposed of in other Federal order markets by Philadelphia and Wilmington handlers. Section 1004.53 of the Philadelphia Order No. 4 which reads: "The price to be paid by handlers for Class I milk disposed of in the New York-New Jersey marketing area (Part 1002 of this chapter) shall be the Class I-A price computed pursuant to such part less such payment as is required on such milk pursuant to such part" should be revoked from the order.

The need for this provision no longer exists in light of the decision concerning the complementary provision of the New York-New Jersey milk order and other revisions currently being effected in the provisions of such order.

Alternative methods of pricing milk sold by handlers under Order No. 4 into other Federal order marketing areas were proposed at the hearing:

The Philadelphia handler association and a producer cooperative which is also a handler in the market proposed that when a handler disposes of milk in another Federally-regulated marketing area such milk be classified and priced according to the terms of the order which regulates the marketing area into which the milk is sold, but that all monies due on this milk be paid to the producers who actually supplied the milk.

A major producer cooperative association in the market proposed that a Philadelphia handler who sells Class I milk into the New York-New Jersey marketing area should account to his producers for such milk at the Philadelphia Class I price, but if the Class I-A price in the New York-New Jersey market is higher than the Philadelphia Class I price, then the handler should pay the difference between the two Class I prices into the

Order No. 2 (New York-New Jersey) producer-settlement fund.¹

A major handler testified that all fluid sales made by Philadelphia handlers, regardless of whether they are inside or outside the Philadelphia marketing area should be accounted for to producers at the Order No. 4 Class I price. No further pricing or payment would apply even if some of the outside-area sales were made in the marketing area of another Federal order with a higher minimum Class I price.

Handlers who are associated primarily with, and regulated by, the Philadelphia or Wilmington Federal milk order but who dispose of some milk in another Federally-regulated market with a marketwide pool, may have obligations under the other Federal order as to milk disposed of in that marketing area. It is necessary, under such conditions, that the respective orders be coordinated in their application to milk distributed within the latter area from the Philadelphia or Wilmington market.

This requires certain amendments to the Philadelphia and Wilmington orders. Particularly is it necessary, because of operations conducted by certain handlers in each of the New York-New Jersey, Philadelphia and Wilmington markets, to amend the Philadelphia and Wilmington orders to recognize the provisions of the New York-New Jersey milk order as to milk purchased under such order by Philadelphia or Wilmington handlers for distribution in the New York-New Jersey market.

The amendments recently designed for the New York-New Jersey order, which have significant application to certain handlers subject to the Philadelphia and Wilmington orders, specify that any plant from which milk is disposed of into the New York-New Jersey marketing area as Class I-A milk, either on routes or at other plants, shall have met the "pool plant" requirements under the New York-New Jersey order if the total quantity of such Class I-A milk exceeds 800 pounds per day and the percentage of total Class I-A and I-B milk in the plant is not less than the New York-New Jersey marketwide Class I-A and I-B utilization percentage for the same month in the preceding year. Any plant which disposes of less than 800 pounds per day of Class I-A milk in the New York-New Jersey marketing area but which meets the other "pool plant" requirements would be exempt from the pooling and pricing provisions of Order No. 2. In the New York-New Jersey order "pool plant" requirements are determined on an individual plant basis and have been so determined for many years.

Any such plant disposing of Class I-A milk in the New York-New Jersey mar-

¹ Although a specific proposal was not made in this regard, the same proponent suggested further that if an Order No. 2 handler sold milk into the Philadelphia marketing area and the Order No. 4 class prices exceeded the Order No. 2 class prices, the Order No. 2 handler should make payment of the difference in prices to the Order No. 4 market administrator. It was not indicated, however, how the proceeds might be distributed among Philadelphia producers through the individual-handler pooling plan.

ket in excess of 800 pounds per day need not be a pool plant, however, if (a) the Class I-A sales in the marketing area are offset by receipts of Class I milk priced under any order with a marketwide pool, or (b) the handler establishes a pool bulk tank unit(s) of producer milk under Order No. 2 sufficient to offset his Class I-A sales of milk into the New York-New Jersey marketing area, to be pooled in the same manner as other producer milk.

Any plant or bulk unit disposing of any Class I-A milk in the New York-New Jersey marketing area but with a utilization percentage below the market average for the same month in the preceding year would partially pool the total quantity of milk in Class I-A.

Under such revisions of the New York-New Jersey order, a Philadelphia handler, for example, who disposes of Class I-A milk in the New York-New Jersey marketing area would be enabled to designate some of his producers in a "pool bulk tank unit" under Order No. 2. The milk received from these producers would be fully pooled and priced as producer milk under the New York-New Jersey order. The handler would be charged the classified-use value on this milk under Order No. 2 in the same manner as any pool handler in like circumstances and would be given credit at the applicable Order No. 2 blend price. The handler then would be required to pay this minimum blend price to his designated New York-New Jersey producers.

To coordinate with these provisions of the New York-New Jersey order, the Philadelphia and Wilmington orders should be amended to provide that a handler regulated under either of the latter orders who regularly receive milk from dairy farmers whom he designates to producers under the New York-New Jersey order, to offset his disposition of Class I-A milk in that market, will not be obligated further for payment to such dairy farmers under the terms of these orders. This may be done by deducting from the handler's total receipts of milk and total classified disposition of milk, the receipts of milk from the designated dairy farmers and the disposition of these receipts.

Thus, in computing the total quantity of milk in each class, in allocating receipts to classes, and in computing the handler's net obligation under the Philadelphia order, the milk of such Order No. 2 producers and the classified use value of their milk would not be included with the receipts and disposition of the milk received from his Order No. 4 producers. (A description of the specific amendment necessary to accomplish this may be found below under the heading "Allocation of milk to classes". A description of the allocation treatment of Class I milk received as an offset to disposition in the New York-New Jersey market also will be found under that heading.)

Situations may arise, however, where a plant regulated under the Philadelphia or Wilmington order disposes of Class I-A milk in the New York-New Jersey marketing area but its utilization percentage is below the market average for

the same month in the preceding year. If such a plant does not offset its Class I-A sales in the marketing area by receipts of Class I milk priced under any marketwide pool order or establish a pool bulk tank unit of producer milk under Order No. 2 sufficient to offset its Class I-A sales then the quantity of Class I-A milk disposed of in the New York-New Jersey marketing area would be subject to "partial pooling" under Order No. 2. Under these conditions, the Philadelphia or Wilmington handler would be charged the Class I-A price under the New York-New Jersey order on the quantity of Class I-A milk disposed of in that marketing area and given credit at the applicable Order No. 2 blend price. However, the handler would not be obligated under Order No. 2 to pay this blend price to his producers.

It has been concluded in connection with the New York-New Jersey regulation that unless the above provision is contained in the order for handling Class I-A milk disposed of from a low utilization plant under an individual-handler pool order, the operator of such a plant could dispose of substantial quantities of milk as Class I-A (generally up to 25 percent of his producer receipts) without becoming fully regulated, thereby improving his competitive position at little or no expense to himself.

The Philadelphia and Wilmington individual handler pool orders have limited capability of achieving marketing stability because they have virtually no regulatory effect upon cooperative associations in their capacity as the handler or operator of a milk plant. The statute authorizes cooperative associations to return the proceeds (whatever they are) received from the sale of milk in all markets to their own members without regard to the minimum class prices specified in the respective orders. Although cooperatives under this provision of the statute may not sell milk to regulated handlers at less than the class prices specified in the order, no particular provision is made with respect to the sale of milk to nonhandlers, such as the sale of milk to consumers. Thus, if any cooperative association accumulates quantities of milk beyond those that it can sell readily at normal prices, a special incentive arises for the cooperative to find some outlet where this excess may be disposed of at any price above its manufacturing value. It is especially advantageous if the outlet for this additional milk is outside of the cooperative's major market or area of disposal.

Proprietary handlers also face different incentives when they operate under individual-handler pooling than when they operate under marketwide pooling. Under individual-handler pooling, procurement advantages accrue to the individual handler who maintains a relatively high blended return to his own producers. Consequently, a proprietary handler who accumulates more than an average proportion of surplus milk is under competitive pressure either to reduce his purchase of milk from producers (usually by cutting off purchases from one or more producers) or by attempting to increase his Class I sales. One ad-

vantageous way to increase Class I sales is by reducing prices in some market outside the handler's normal or major area of distribution.

To coordinate the Philadelphia and Wilmington orders with this provision of the New York-New Jersey order, the transfer provisions in these two orders should be amended to provide that any milk disposed of in another Federal marketing area either on routes or to regulated plants and subject to "partial pooling" under such order, should be classified under the originating order in accordance with the utilization reflected by the blend price computed under such other order. The handler's obligation for such milk under the Philadelphia or Wilmington order (as the case may be) would be determined by applying the applicable order class prices to such classification.

Situations may arise where a Philadelphia (or Wilmington) handler has some milk which is subject to "partial pooling" under another Federal order, but on the date the Philadelphia (and Wilmington) market administrator must compute the handler's obligation to producers, the utilization reflected by the blend price under the other order may not be available. In such an event, the market administrator would estimate a market utilization for the other Federal order for use in computing the classification of the milk received by the handler. In view of data available to the market administrator in the receiving market, such an estimate can be made with a reasonable degree of accuracy. Later, when auditing the handler's books and records, the market administrator would adjust his computed classification to reflect the actual market utilization under the other Federal order.

It is necessary also to make conforming amendments in other sections of the respective orders. The "producer" and "producer milk" definitions under the Philadelphia and Wilmington orders should be amended to exclude therefrom any dairy farmers whose milk becomes producer milk under the New York-New Jersey order. This amendment is necessary to relieve the handler of any obligation to these dairy farmers under the Philadelphia or Wilmington orders.

Similarly, coordinating amendments are necessary to the section requiring handlers to report certain information to the market administrator and to § 1004.61(c).

To further accomplish the objectives outlined above, milk regulated under the Philadelphia or Wilmington Federal order which is disposed of in another Federal order market should receive similar classification treatment under both orders. Classification should be based upon assignment in the market where used. (Later in this decision under another issue is a description of the specific procedure for allocating to classes milk received by Philadelphia and Wilmington handlers from other Federal order markets.) The provisions contained in this decision will permit dovetailing with other orders as complementary amendments to such orders are possible.

Except in the circumstances previously described, the interplant transfer provisions, therefore, should classify milk in the class (or classes) to which assigned under the other Federal order when such milk is transferred from a plant regulated by the Philadelphia or Wilmington order to a plant regulated by another Federal order.

4. *Incidence of order provisions on any plant qualified both as a "producer milk plant" under the Philadelphia order and as a fully regulated plant under the provisions of another Federal order.* Section 1004.61(a) of the Philadelphia order should not be amended to revoke the language, "* * * unless, notwithstanding that it would be regulated under this part, it is nevertheless regulated under such other order".

It was proposed by a producer cooperative association that such language should be deleted from the order. If this language were deleted, a handler whose Class I sales in the Philadelphia marketing area exceed those in another federally regulated marketing area could not be relieved of his obligations under Order No. 4 even though he became regulated under the other order also.

Full regulation of milk under more than one order, of course, should be avoided. Under most circumstances it is appropriate that a plant from which Class I sales are made in two or more markets should be regulated by the order under which the greatest proportion of its total Class I sales are made. The New York-New Jersey order, which provides for marketwide pooling, requires, however, that plants meet specified performance standards for pooling. Once a plant has met these performance standards, then the pool producers who deliver to that plant share, along with all other dairy farmers supplying the market, the returns from the utilization of all milk delivered for sale in the market. Unless all such plants are included in the marketwide pool, the applicable regulation would fail to achieve its purpose of providing stabilized marketing conditions which depend upon the marketwide sharing of pool funds. To assure that the Philadelphia order will be coordinated with the New York-New Jersey order, it is concluded that the Philadelphia order should continue to relieve any handler of his pricing obligations under Order No. 4 whenever such handler's plant becomes regulated under another Federal order, notwithstanding its regulated status under this order.

Several exceptions were received regarding the treatment given to a plant primarily associated with an individual-handler pool market which meets the pooling requirements of a marketwide pool order (such as Order No. 2 or one of the five New England orders). These exceptions, however, were directed toward the provisions contained in the marketwide pool orders, even though some of the exceptions were filed in opposition to specified findings in the Philadelphia and Wilmington recommended decision of June 7, 1963. Because of the nature of the marketing relationships between the New York-New Jersey and the Delaware Valley market-

ing area, it is concluded that no change from the recommended decision should be made in the provisions regulating a plant that meets pooling standards of both regulations.

Situations may arise, however, where a Philadelphia handler has Class I distribution in the Philadelphia marketing area and, in addition, has Class I distribution in another Federal marketing area where the other order exempts such plant from pooling. At the present time the standard of "majority" route sales is used in this order to determine which Federal order will regulate a plant that has route, and perhaps other Class I, disposition in more than one federally regulated marketing area.

An operating cooperative proposed that an Order No. 4 pasteurizing or bottling plant which has route sales and bulk or packaged sales to other plants in more than one Federal milk marketing area be regulated in the market in which it has the greatest quantity of Class I milk, including both sales to other handlers and route disposition. This concept also was supported by two proprietary handlers.

Another cooperative contended that association with the market for regulatory purposes normally should be based upon regularity of shipment and suggested that route sales continue to be used as the best measure of market association since milk sales in bulk normally tend to fluctuate more widely than route sales. This cooperative association stated in its brief, however, that it did not oppose the proposal of the operating cooperative.

The situation has occurred where a Philadelphia handler's route distribution in the Philadelphia marketing area does not exceed his route distribution in another federally regulated marketing area, but because substantial quantities of bulk milk are supplied to other handlers in Philadelphia, the handler's total volume of Class I milk disposed of in the Philadelphia market exceeds his Class I disposition in the other market.

It is concluded that except in those cases where the plant is required to be regulated under another order it is reasonable to regulate the distributing plant under the order for the area in which it disposes of the greatest volume of Class I milk both on routes and to other plants.

5. *Allocation of milk from various sources to classes of utilization.* The provisions for the allocation of milk to classes, especially as they apply to receipts of milk from other than producer sources, should be modified:

(a) *Allocation of receipts from Federal marketwide pool orders to offset sales in New York-New Jersey market.* The allocation provisions of Philadelphia Order No. 4 currently require that a handler must allocate all receipts of milk priced under other Federal orders to any available Class II milk. In the Wilmington market all receipts from plants under other Federal orders, except Class I products in packaged form which are received from a plant at which only producer milk was allocated to Class I milk, likewise are allocated to any available Class II milk. No exception is made in either order for a handler who distributes

milk also in the New York-New Jersey marketing area, and who, on the basis of the amendments to that order, to avoid pooling under such order, must receive a volume of milk either from plants subject to Federal marketwide pool orders or from pool bulk tank units under Order No. 2 which is not less than the Class I-A volume sold in the Order No. 2 marketing area.

The need to coordinate the provisions of the Philadelphia and Wilmington Federal orders with the New York-New Jersey order were described under issue No. 1. In that connection, it was indicated that a Philadelphia or Wilmington handler would be able to purchase Class I milk from any marketwide pool order for the purpose of offsetting his Class I-A sales in the New York-New Jersey marketing area. To avoid additional payment by the handler on such milk, it should be assigned to Class I milk under the Philadelphia (or Wilmington) order. To assure that this milk does receive a Class I assignment, these receipts should be assigned before other receipts of milk are assigned to classes. The provisions contained in the amendatory language will permit dovetailing with other orders as complementary amendments to such orders are possible.

Milk may be received by the Philadelphia or Wilmington handler from a bulk tank unit, regulated by Order No. 2, to offset his Class I-A sales in the New York-New Jersey marketing area. Such receipts will be fully classified and priced under the New York-New Jersey order, however, any such receipts in excess of the handler's Class I-A sales in the New York-New Jersey marketing area will be classified in accordance with their classification assignment under the Philadelphia or Wilmington order.

Except as described in the "offset" provision set forth above, any milk received by a handler under Orders Nos. 4 or 10 from other Federal orders should be allocated to classes in the manner set forth in (c) below.

(b) *Allocation of receipts from unregulated sources.* A representative of the State of Wisconsin supported a proposal to require local producers to share their Class I sales proportionately with any milk purchased by a handler from sources not regulated by a Federal order. This witness testified further that the administrative assessment applicable under the order should be applied on the actual volume of milk shipped to the market from an unregulated plant rather than on total dairy farmer receipts at such plant.

This witness maintained that to allocate unregulated milk to any available quantity in the lowest-priced use classification when received in the Philadelphia market reduces the opportunities for the sale of such milk when supplemental milk supplies may be needed.

The Wisconsin representative stated further that although on an annual average basis the Class I prices in the Philadelphia market may not exceed the prices of milk in Wisconsin by an amount to encourage shipments on a year-round basis, the Philadelphia Class I prices might exceed Wisconsin prices sufficiently during the fall months of the

year when production is shortest to encourage a Wisconsin plant operator to seek outlets in the Philadelphia market provided the order does not create an impediment.

It was developed in this connection that, based on 1961 data, only during the last six months of the year was the Philadelphia Class I price sufficiently high to more than cover the farm price of whole milk at a Wisconsin plant plus estimated handling and shipping costs. Even then, during the three months of July through September the Class I price minus cost difference amounted to only 20 cents per hundredweight. For a Philadelphia plant with any appreciable amount of Class II milk the blend price would be, of course, well below the Class I price. In the Wilmington marketing area the Class I prices are constantly 15 cents lower than in the Philadelphia marketing area, making this market even less attractive to the distant shipper.

The representative of a Philadelphia regulated handler who operates a plant in Wisconsin stated that cream is shipped regularly from its Wisconsin plant into its Philadelphia plant for Class II uses, but that fluid milk is not shipped because it has not been found practicable to do so since the Order No. 4 Class I price minus the sum of hauling cost from Wisconsin and local receiving station cost in Wisconsin yields a value less than current prices to farmers for milk at the Midwestern location.

The Philadelphia handler with the Wisconsin plant testified further that there would be no other obstacle to associating the entire supply of its Wisconsin plant with the company's Philadelphia producer milk plant system for the purpose of furnishing fluid milk to the market, since the only requirement would be to notify the market administrator that the plant was being included in the system.

At present the Philadelphia and Wilmington orders allocate "other source milk" to any available Class II utilization before the allocation of producer milk. Since compensatory payments have not been practicable under these orders with individual-handler pools, it has been considered necessary to establish "pooling" provisions which, in most circumstances, would bring under full regulation the operator of any plant which supplies milk to the market, any part of which is allocated to Class I.

Under individual-handler pools, if relatively high percentage delivery performance standards were established in the manner frequently employed with marketwide pools, a handler could procure part, or all, of his supply from plants not meeting the qualifying standards and, by so doing, evade regulation. Consequently, it is necessary that a procedure be established which protects the integrity of the regulation.

In considering the appropriate assignment of transfers of milk (whether in bulk or packaged form) from unregulated plants to plants regulated under the Philadelphia and Wilmington orders, there are three different types of transfers which must be evaluated:

(i) *Transfers from any unregulated plant (except the plant of a producer-*

handler) to a regulated distributing-type plant. As a general proposition it is desirable that the allocation provisions should not impede the shipment of milk from unregulated plants to regulated distributing-type plants, as long as they do not provide, at the same time, an incentive for the handler to circumvent the order to gain price advantage over other handlers receiving producer milk.

As stated above, the present pooling provisions require transferor-plants to become subject to full regulation if they ship any milk which is allocated to Class I. The present orders provide further that during all months of the year receipts of other source milk shall be allocated first to Class II milk. This, of course, reduces the probability of allocation to Class I and, therefore, of the full regulation of the source plant. Prorata allocation of other source milk, on the other hand would require that some portion of such milk received be allocated to Class I which, accordingly, would result in the full regulation of the source plant during any month in which milk was shipped into the market.

Situations may arise, perhaps frequently, where milk is received at a regulated distributing plant from an unregulated plant specifically for Class II uses. If the order were to require that such milk be subject to prorata allocation, the transferor-plant definitely would become subject to regulation when it supplied any amount of milk, no matter how small or whether supplied for manufacturing use, to a regulated distributing plant. Under these conditions the operator of the unregulated plant might well refuse to sell milk to the regulated handler and, consequently, the most efficient use of facilities might be prevented. It is concluded, therefore, that the regulated handler and the operator of the unregulated plant should be permitted to claim Class II assignment for such receipts in writing at the time of filing the monthly report. The market administrator then would assign such receipts to any available Class II milk at the regulated plant.

If such receipts were in excess of the available Class II milk at the distributing plant, such excess receipts would be assigned to Class I and, accordingly, the transferor-plant would become subject to full regulation as otherwise provided. Once the plant became subject to full regulation, the entire quantity of transferred milk would be subject, of course, to the specific conditions set forth in the inter-handler transfer provisions.

(ii) *Transfers from any unregulated plant to a regulated supply-type plant.* Receipts of other source milk at supply-type plants should continue to be allocated to any available Class II milk at the supply plant. Some of the federally regulated supply plants have manufacturing facilities and constitute outlets for excess supplies of both regulated and unregulated milk. Unregulated milk is seldom moved to these supply plants for other than surplus disposal purposes. To disturb this arrangement would interfere both with the orderly disposal of the surplus of both regulated and unregulated fluid markets and the procurement of milk for the efficient operation

of manufacturing facilities at the regulated supply plants. Thus, when milk is received at a regulated supply plant, it should continue to be assigned first to Class II milk.

(iii) *Transfers from a producer-handler to any regulated plant.* Receipts of milk at any Philadelphia or Wilmington regulated plant from a producer-handler under any Federal order also should continue to be allocated first to available Class II milk.

Any person with producer-handler status under any Federal order is, for the most part, exempt from the classification and pricing provisions of that order. Basically, the justification for such exemption is that a producer-handler's Class I distribution operation usually represents a self-contained enterprise which does not rely upon other producers to carry the burden of its surplus.

Normally, however, the producer-handler does not maintain facilities for processing manufactured milk products. But from time to time, and particularly during the flush months, he (along with producers generally) may produce milk in excess of his own Class I distribution needs. This is surplus milk and it must be disposed of through some other outlet. As long as the producer-handler has the advantage of enjoying the full benefit of his own Class I sales customarily made on his own distribution routes, without pooling them with sales of other producers, he should not also receive Class I benefit, at the expense of other producers, for any of his milk which he must sell to regulated handlers. Thus, any milk disposed of by a producer-handler under any Federal order to a fully regulated handler's plant should be allocated to any available Class II milk at the regulated handler's plant as surplus of the producer-handler.

(c) *Allocation of receipts from other Federal orders.* It is likewise necessary, to accommodate movements of milk between regulated markets, that these orders be amended in regard to the allocation of milk received at Philadelphia and Wilmington plants from plants under other Federal orders.

The Philadelphia and Wilmington orders should be amended to provide that Class I products in consumer-type packages which are fully classified and priced as Class I milk under any other Federal order, or subject to equivalent classification and pricing, and are received at any producer milk plant (or fluid milk plant) shall be assigned to Class I milk. Class I products moved in consumer packages from a handler under one Federal order to the plant of a handler in another order market normally represent a regular part of the Class I milk supply for the market where they are sold. Most inter-market movements of packaged products are purchased specifically for route sales and the transferee-handler must develop such sales and maintain them on a continuing basis. The packaged Class I products often represent specialty items not processed in the receiving plant or milk in special packages which the receiving plant is not equipped to handle for processing.

Bulk milk received at the supply-type plant of a Philadelphia or Wilmington handler should be assigned to any available Class II milk for reasons set forth earlier in this decision.

Bulk milk priced under any other Federal order and received at the distributing-type plant of a Philadelphia or Wilmington handler should be assigned pro rata to Class I and Class II milk. Such pro rata assignment should apply to any remaining product pounds of Class I milk and Class II milk at the receiving plant after assigning to Class I milk the receipts of certified milk in packaged form, Class I packaged milk from plants under other Federal orders and after assigning to Class II milk, to the extent possible, milk from non-federally regulated sources. Receipts of bulk milk from marketwide pool orders which had not been assigned previously to offset Class I sales in another Federal marketing area would be included in this pro rata allocation.

Because milk received from other Federal orders already has been charged an administrative assessment under the originating order, no administrative assessment would be levied on such receipts.

6. *Classification and assignment of certain uses of milk.* The Philadelphia (and Wilmington) orders should continue to assign first to any available Class II milk, any products which are included in Class III milk under Order No. 2 but are defined as Class I milk under the Philadelphia and Wilmington orders.

A proprietary handler who has route disposition in both the Philadelphia and New York-New Jersey marketing areas receives at its Philadelphia regulated pasteurizing and bottling plant in Trenton, New Jersey such items as half-and-half, buttermilk, skim milk, cream and bottled fluid milk in consumer type packages of particular size from an affiliated plant at Newark, New Jersey regulated under the New York-New Jersey order.

Half-and-half, buttermilk and bottled skim milk under the New York-New Jersey order which are distributed outside the New York metropolitan district presently are included in Class III milk, but under the Philadelphia order they are defined as Class I milk wherever sold.

This handler also has distribution in Mercer County, New Jersey, in competition with Order No. 2 handlers. Because this county is not under any Federal order the handler claims competitive disadvantage on these items with Order No. 2 handlers distributing in the same county since he is accountable to producers at the Philadelphia Class I price for such products, while Order No. 2 handlers account under the New York-New Jersey order for such products at the New York-New Jersey Class III price. The handler proposed that, regardless of the pricing applied under the New York-New Jersey order, all receipts from such order which are classified as Class I milk under the Philadelphia order be allocated to Class I milk when received at a Philadelphia handler's plant.

There is competition between New York-New Jersey and Philadelphia han-

dlers in unregulated areas located in New Jersey for the sale of half-and-half, buttermilk and bottled skim milk. As stated above, at the present time Order No. 2 handlers selling in these unregulated markets are required to pay only the Class III price for milk used in these products when such products are disposed of outside the New York-New Jersey marketing area. Philadelphia handlers with disposition in these same unregulated markets are required, however, to pay the Class I price for milk used in these products.

Basically, the problem presented by proponent in connection with such proposal, involves primarily the sale of these products in the unregulated areas located in New Jersey rather than within the New York-New Jersey or Philadelphia markets.

Proponent's solution was that all receipts from the New York-New Jersey market which are classified as Class I milk under the Philadelphia order should be allocated to Class I milk when received at a Philadelphia regulated plant regardless of the pricing applied under Order No. 2. If this proposal were adopted, Order No. 4 handlers would be encouraged to purchase these products from Order No. 2 sources when they are priced as Class III milk under Order No. 2. Such purchases then would replace milk received from Philadelphia producers and reduce an essential outlet for the milk of Philadelphia producers. Under such circumstances it could only expand the problem of price difference on these products by having an adverse effect upon the competitive position of other Philadelphia handlers who might not be in as favorable a position to purchase these products from Order No. 2 sources, but would purchase milk for such products at the Class I price under the Philadelphia order. For these reasons, such products should continue to be assigned to Class II milk provided they are classified and priced as Class III milk under Order No. 2 and the proposal therefore is denied.

To bring about equivalent pricing of these products under the Philadelphia, Wilmington and New York-New Jersey orders it would require either a reclassification of the products to a lower class under the Philadelphia and Wilmington orders or, conversely, a higher classification under the New York-New Jersey order. Neither of these courses is possible from this hearing. Further, involvement of these products under the Philadelphia and Wilmington orders can be avoided if the handler who purchases these products from Order No. 2 sources for distribution in unregulated markets does not receive these products at his regulated plant, but instead moves such products from the New York-New Jersey regulated plant directly to a distribution depot not physically connected with his regulated plant.

The same handler proposed also that buttermilk, flavored milk drinks, half-and-half and certain dietary products which are sold on routes from Philadelphia regulated plants into the New York-New Jersey marketing area be priced under the Philadelphia order at the Order No. 2 Class III price. According to

the witness, the failure to so classify and price such products imposes a "penalty" upon Order No. 4 handlers who dispose of milk into the New York-New Jersey market.

The Philadelphia order classifies such products as Class I milk, wherever sold. They are classified Class III milk under the New York-New Jersey order when disposed of outside the New York Metropolitan district of the marketing area. If such products are distributed inside the Metropolitan district, however, they are classified Class II milk. Further, these products (except buttermilk) when disposed of inside the New York-New Jersey marketing area, regardless of whether they are classified Class II or Class III, are subject to the "fluid skim differential" under that order. This differential increases the price of any such products classified as Class II milk to a level which corresponds to the Class I-A price, and increases the price of such products classified as Class III milk to a level only slightly below the Class I-A price. Therefore, we may not agree that the price differences between the orders on such products disposed of by Order No. 2 handlers have the adverse effect contended by the proponent. The second proposal, therefore, is denied.

Rulings on proposed findings and conclusions and on motions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties with respect to both hearings. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

At the hearing convened September 13-14, 1962, a motion was made requesting the Secretary of Agriculture, in making this decision affecting the Philadelphia and Wilmington orders, to take judicial notice of any decision and amendments to the New York-New Jersey milk marketing order to result from the hearing which was convened on September 5, 1962, at New York City. A brief was filed in which this motion was reiterated. In arriving at the findings and conclusions and provisions contained herein, the findings and conclusions and provisions in the decision to amend the New York-New Jersey milk order based upon such hearing have been taken into account. Interested persons in the Philadelphia, Wilmington, and New York-New Jersey markets have had opportunity to examine the two decisions to determine how the respective orders have been correlated and to advise the Secretary accordingly in their exceptions. The motion is moot and, therefore, specific ruling thereon is unnecessary.

Both in briefs filed after the hearing of March 5-April 2, 1963, and in exceptions to the recommended decision issued September 30, 1963, some handlers expected to certain of the rulings by the

presiding officer at the hearing pertaining to the admission in evidence of certain documents and testimony of witnesses. Each of the rulings by the presiding officer to which exception was taken has been reviewed, and it is found that such testimony and documentary evidence was relevant and material to the issues involved in the proceeding and such rulings of the presiding officer are affirmed.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received with respect to both recommended decisions was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Delaware Valley Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Delaware Valley Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the **FEDERAL REGISTER**. The regulatory provisions of

said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted to determine whether the issuance of the attached order amending the order regulating the handling of milk in the Delaware Valley marketing area, is approved or favored by the producers, as defined under the terms of the order, as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of June 1963 is hereby determined to be the representative period for the conduct of such referendum.

L. S. Iverson is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Signed at Washington, D.C., on October 31, 1963.

GEORGE L. MEHREN,
Assistant Secretary.

Order¹ Amending the Order Regulating the Handling of Milk in the Delaware Valley Marketing Area

§ 1004.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) **Findings upon the basis of the hearing record.** Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Delaware Valley marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulated the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, two cents per hundredweight or such amount not to exceed two cents per hundredweight as the Secretary may prescribe, with respect to all receipts of producer milk including such handler's own production.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the Philadelphia and Wilmington orders (Parts 1004 and 1010) shall be merged under one order and the handling of milk in the consolidated marketing area, the Delaware Valley marketing area, shall be in conformity to and in compliance with the terms and conditions of Order No. 4 as hereby amended, and the aforesaid order is hereby amended to read as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Assistant Secretary on September 30, 1963, and published in the **FEDERAL REGISTER** on October 3, 1963 (28 F.R. 10646; F.R. Doc. 63-10506) shall be and are the terms and provisions of this order, as if set forth in full herein subject to the following revisions:

Changes are made in §§ 1004.8(b); 1004.13(b) (2) introductory text; 1004.15; 1004.30(h); 1004.44 (a), (c), (d) introductory text and (d) (iii); 1004.47 (a), (b) (3), (b) (7) introductory text, and (b) (7) (ii); 1004.70 introductory text and 1004.70(e); 1004.71 introductory text.

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- 1004.80 Payments to producers.
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- 1004.90 Effective time.
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MISCELLANEOUS PROVISIONS

- 1004.100 Agents.
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AUTHORITY: §§ 1004.0 to 1004.101 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

DEFINITIONS

§ 1004.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1004.2 Secretary.

"Secretary" means the Secretary of Agriculture, or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 1004.3 Department of Agriculture.

"Department of Agriculture" means the United States Department of Agriculture or any other Federal agency as may

be authorized by Act of Congress, or by Executive order, to perform the price reporting functions of the United States Department of Agriculture.

§ 1004.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1004.5 Delaware Valley marketing area.

"Delaware Valley marketing area", called the "marketing area" in this part means all the territory in the Commonwealth of Pennsylvania situated within the following boundary line: Beginning at a point in the Pennsylvania State line at the northern boundary of the Lower Makefield township line in Bucks County, thence first westerly, thence southerly along said Lower Makefield township line to the Middletown township line; thence westerly and southerly along the Middletown township line to the Lower Southampton township line; thence northerly and thence westerly along the Lower Southampton township line to the Montgomery County line; thence northerly along the Montgomery County line to the Trenton cut-off of the Pennsylvania Railroad; thence westerly along said railroad to the Upper Dublin township line, thence along the southern and western boundaries of Upper Dublin township to the Whitmarsh township line; thence southerly along the Whitmarsh township line to the lower Merion township line; thence along the northern boundary of lower Merion township to the Delaware County line; thence northerly, westerly and southerly along the Delaware County line to the Pennsylvania State line; thence easterly and northerly along the Pennsylvania State line to the point of beginning; all of that territory situated within and bounded on the north, east and west by the boundary line of the State of Delaware, and on the south by the Chesapeake and Delaware Canals, all of which area lies within New Castle County, Delaware and all of the territory in the State of New Jersey within the outer boundaries of the following counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Salem, and Ocean (except the boroughs of Bay Head, Beachwood, Island Heights, Lakehurst, Lavallete, Mantoloking, Ocean Gate, Pine Beach, Point Pleasant, Point Pleasant Beach, Seaside Heights, Seaside Park, South Toms River, and the townships of Berkeley, Brick, Dover, Jackson, Lake-wood, Manchester, and Plumsted).

§ 1004.6 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1004.7 Plant.

"Plant" means the land, buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons constituting a single operating unit or establishment at which milk or milk products are received from dairy farmers or processed or packaged: *Provided*, That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distribution depot for fluid milk products in transit for route distribution shall not be a plant under this definition.

§ 1004.8 Producer milk plant.

"Producer milk plant" means:

(a) A pasteurizing or bottling plant from which during the month route disposition is made in the marketing area; or

(b) Any plant from which, during the month, milk in the form of fluid milk products is moved to and received at a plant pursuant to paragraph (a) of this section unless Class II utilization is claimed for the fluid milk products so transferred by both the transferor and transferee handler in filing reports pursuant to § 1004.30 and a sufficient quantity of Class II utilization is available, after making assignments pursuant to § 1004.47(b) (1) through (5) and the corresponding steps of § 1004.47(c), in the transferee plant to cover such claimed classification: *Provided*, That in the case of a systemic operation in which the same handler operates both a pasteurizing or bottling plant(s) qualifying as a producer milk plant(s) under paragraph (a) of this section and one or more receiving plant(s), any such plant(s) as the handler may designate shall be included in the system with producer milk plant status upon written notice to the market administrator setting forth the plant(s) to be included and the period during which such designation shall apply. Such notice and notice of any changes in designation shall be furnished on or before the 15th day of the month preceding the month to which the notice applies.

§ 1004.9 Nonproducer milk plant.

"Nonproducer milk plant" means any milk receiving, manufacturing, processing, bottling or distributing plant other than a producer milk plant.

§ 1004.10 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a producer milk plant; or

(b) Any person in his capacity as the operator of a nonproducer milk plant which disposes of any fluid milk product to a producer milk plant.

§ 1004.11 Producer.

"Producer" means any person who produces milk which is received directly at a producer milk plant or is diverted pursuant to § 1004.13 (b) except:

(a) A producer-handler; or

(b) A dairy farmer whose milk is received as milk diverted from a non-producer milk plant; or

(c) A dairy farmer whose farm is included in a pool bulk tank unit under the New York-New Jersey milk order.

§ 1004.12 Producer-handler.

"Producer-handler" means any person who operates as his own personal enterprises both a dairy farm and a producer milk plant from which route disposition is made in the marketing area during the month, but who receives no milk from other dairy farmers.

§ 1004.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk which is:

(a) Received at a producer milk plant directly from producers; or

(b) Diverted by the operator of a producer milk plant subject to the conditions of subparagraphs (1) and (2) of this paragraph: *Provided*, That milk so diverted shall be deemed to have been received at a producer milk plant at the location of the plant from which diverted except that, for the application of § 1004.52 only, milk diverted between producer milk plants of the same handler shall be priced as though received at the plant having the lesser location differential:

(1) To another producer milk plant, except that of a producer-handler; or

(2) To a nonproducer milk plant (except another Federal order plant at which such milk would be producer milk regardless of its status under this order) if the producer:

(i) Held producer status throughout the entire preceding month; or

(ii) The greater volume of his milk from the first day of delivery or diversion during the current month was physically received at a producer milk plant.

§ 1004.14 Fluid milk product.

"Fluid milk product" means all skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, cultured buttermilk, flavored milk, milk drinks (plain or flavored), concentrated milk, and any other mixture of cream and milk or skim milk containing less than 18 percent butterfat (other than ice cream, ice cream mixes, milk shake mixes, ice milk mixes, eggnog, and sterilized products in hermetically sealed containers): *Provided*, That when nonfat milk solids are added for "fortification", the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1004.15 Other source milk.

"Other source milk" means all skim milk and butterfat contained in receipts from any source in a form other than a fluid milk product which are reprocessed or converted to another product during the month and all receipts in the form of fluid milk products from any source other than producers and producer milk plants other than those operated by producer-handlers.

§ 1004.16 Certified milk.

"Certified milk" is milk which is produced, packaged and sold under the label

of certified milk in accordance with the rules and regulations promulgated by the American Association of Medical Commissions.

§ 1004.17 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a plant to retail or wholesale outlets (including any delivery by a vendor, from a plant store or through a vending machine) except any delivery of a fluid milk product to a plant.

MARKET ADMINISTRATOR

§ 1004.20 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1004.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 1004.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of the funds provided by § 1004.84, (1) the cost of his bond and of the bonds of his employees, (2) his own compensation and (3) all other expenses necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to his successor or to such other person as the Secretary may designate;

(f) Publicly disclose to the handlers and producers, at his discretion, the name of any person who within 5 days after the day upon which he is required

to perform such acts, has not made (1) reports pursuant to §§ 1004.30 and 1004.31 or (2) payments pursuant to §§ 1004.80 through 1004.84;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be required by the Secretary;

(h) Prepare and make available for the benefit of producers, consumers and handlers, general statistics and information concerning the operation of this part;

(i) Verify all reports and payments by each handler by audit, if necessary, of such handlers' records and the records of any other handler or person upon whose utilization the classification of milk and butterfat for such handler depends; and

(j) On or before the date specified, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate the following:

(1) The 5th day of each month, the Class II price and the handler butterfat differential, both for the preceding month;

(2) The 15th day of the month preceding the start of each calendar quarter, the Class I price for such calendar quarter;

(3) The 15th day of each month, the uniform price for each handler computed pursuant to § 1004.71, the utilization percentage for such handlers, and the differentials applicable pursuant to §§ 1004.81 and 1004.82 all for the preceding month;

(4) Promptly after receipt of notice from any handler of unit (system) designations, or of changes therein, pursuant to the proviso of § 1004.8(b) the names and locations of plants so designated; and

(5) The 15th day of each month, the indexes computed pursuant to § 1004.50 (a) (1) for the preceding month, the 12-month average of prices for milk for manufacturing purposes as determined pursuant to § 1004.50(b) (1) for the period ending with the preceding month and the 12-month percentage utilization factor for the period ending with the preceding month calculated in the manner described in § 1004.50(a) (4) and (5).

REPORTS, RECORDS AND FACILITIES

§ 1004.30 Reports of receipts and utilization.

On or before the 10th day after the end of each month each handler, except a producer-handler, shall report for each of his producer milk plants for such month to the market administrator in the detail and on forms prescribed by the market administrator the quantities of skim milk and butterfat contained in:

(a) Receipts of producer milk (including such handler's own production);

(b) Receipts from other producer milk plants in the form of fluid cream and fluid milk products;

(c) Receipts of other source milk;

(d) Inventories of fluid cream and fluid milk products on hand at the beginning and end of the month;

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section;

(f) Milk diverted from a producer milk plant, from the farm on which such milk was produced to another plant(s); and
(g) Milk received, directly from the farm on which such milk was produced, as milk diverted from a nonproducer milk plant(s).

§ 1004.31 Other reports.

(a) Each producer-handler and each handler in his capacity as the operator of a nonproducer milk plant, shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe; and

(b) Each handler (except a producer-handler) in his capacity as the operator of a producer milk plant shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) On or before the 25th day after the end of the month for each of his producer milk plants his producer payroll for such month which shall show for each producer:

- (i) His name and address;
- (ii) The total pounds of milk received from such producer;
- (iii) The average butterfat content of such milk; and
- (iv) The net amount of such handler's payment together with the price paid and the amount and nature of any deductions;

(2) His purchases, if any, of sweet cream showing the quantity and source of each such purchase and the cost thereof at Philadelphia;

(3) Within 10 days after the market administrator's request, with respect to any producer for whom such information is not in the files of the market administrator, or with respect to any dairy farmer whose farm is included in a pool bulk tank unit as defined under the New York-New Jersey milk order for whom such information is requested by the market administrator, and with respect to a period or periods of time designated by the market administrator;

- (i) The name and address;
- (ii) The total pounds of milk received;
- (iii) The average butterfat test of milk received; and
- (iv) The number of days upon which milk was received;

(4) Such other information with respect to the receipts and utilization of milk and milk products as the market administrator may prescribe; and

(5) Promptly after milk is first received from any producer or dairy farmer whose farm is included in a pool bulk tank unit as defined under the New York-New Jersey milk order:

- (i) The name and address of such producer;
- (ii) The date upon which such milk was first received; and
- (iii) The plant at which such milk was received.

§ 1004.32 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the mar-

ket administrator to verify or establish the correct data which are required to be reported pursuant to this part and the payments required to be made pursuant to this part.

§ 1004.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if within such three-year period the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15) (A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation, or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1004.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received within the month at each producer milk plant and which is required to be reported pursuant to § 1004.30 shall be classified by the market administrator pursuant to the provisions of §§ 1004.41 through 1004.47.

§ 1004.41 Classes of utilization.

Subject to the conditions set forth in §§ 1004.43 through 1004.45, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat:

(1) Disposed of in the form of fluid milk products, except as provided in paragraph (b) (2), (3) and (5) of this section; and

(2) Not accounted for as Class II milk; and

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than a fluid milk product;

(2) Disposed of for livestock feed;

(3) Contained in any fluid milk product which is dumped, provided that the handler shall give such advance notice as the market administrator may require;

(4) Contained in inventory of fluid cream and of fluid milk products on hand at the end of the month;

(5) Disposed of in the form of fluid milk products and used in soup, candy, bakery products or any other nondairy commercial food product, but not including such dispositions to retail establishments which dispose of milk both for fluid and other uses;

(6) In skim milk contained in any forfeited fluid milk product in excess of the pounds of skim milk in such product classified as Class I milk pursuant to paragraph (a) (1) of this section;

(7) In actual plant shrinkage not to exceed two percent of skim milk and butterfat, respectively, in producer milk; and

(8) In shrinkage of other source milk.

§ 1004.42 Shrinkage of other source milk.

The market administrator shall determine shrinkage of other source milk for each producer milk plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each plant; and

(b) Assign a pro rata share of the shrinkage computed pursuant to paragraph (a) of this section to skim milk and butterfat, respectively, to other source milk on the basis of the percentage that such skim milk and butterfat represents of total receipts of skim milk and butterfat, respectively, to which shrinkage may be assigned to Class II milk pursuant to § 1004.41(b) (7) and (8).

§ 1004.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise; and

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 1004.44 Transfers.

Skim milk and butterfat disposed of each month in the form of a fluid milk product from a producer milk plant shall be classified:

(a) As Class I milk if transferred or diverted to another producer milk plant, except that of a producer-handler, unless utilization as Class II milk is claimed by both handlers in their reports submitted for the month to the market administrator pursuant to § 1004.30. The amount of skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee handler after making the assignments pursuant to § 1004.47(b) (1) through (8) and the corresponding steps of § 1004.47 (c) and the assignment of cream transfers pursuant to § 1004.45, and any additional amounts of such skim milk or butterfat shall be assigned to Class I milk. If either or both handlers have received other source milk except milk priced under another Federal order, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I milk utilization to the producer milk of both handlers;

(b) As Class I milk if transferred to a producer-handler;

(c) In the class or classes to which assigned under another Federal order if transferred to a nonproducer milk plant regulated by the other order to the extent such transfers are not offset by receipts of milk and skim milk from the same other Federal order plants: *Provided*, That (1) if any milk is disposed of in the New York-New Jersey market-

ing area, either on routes or to regulated plants, which is subject to the classification and pricing provisions of Order No. 2 it shall be classified in accordance with its classification assignment under the New York-New Jersey order, or (2) if such milk is subject to "partial pooling" under another Federal order it shall be classified in accordance with the utilization reflected by the blend price computed under such order; and

(d) As Class I milk if transferred or diverted in bulk to a nonproducer milk plant which is not subject to another Federal order or refrigerated holding facilities unless:

(1) The transferring handler claims Class II use in his report submitted pursuant to § 1004.30;

(2) The operator of the nonproducer milk plant or refrigerated holding facility maintains books and records which are made available for the examination upon request by the market administrator and which are adequate for verification for such Class II use; and

(3) If the conditions as set forth in subparagraphs (1) and (2) of this paragraph are met, the market administrator shall classify such transfers as follows:

(i) Determine the use of all skim milk and butterfat in such nonproducer milk plant or refrigerated holding facility;

(ii) Allocate receipts from dairy farmers determined to be the regular source of supply of the nonproducer milk plant to the highest use beginning with Class I milk. Allocate transferred milk to Class I milk to the extent remaining, except that if receipts from this and other orders issued pursuant to the Act exceed the amount remaining, the amount of such transferred milk allocated to Class I milk shall be not less than that obtained by prorating the remaining Class I utilization in accordance with the receipts from all such plants at the nonproducer milk plant; and

(iii) In the case of a refrigerated holding facility transferring a fluid milk product to a nonproducer milk plant such product shall be Class I milk unless the nonproducer milk plant to which such product is transferred meets the conditions set forth in subparagraph (2) and (3) (ii) of this paragraph.

§ 1004.45 Transfers of cream.

Cream containing 18 percent or more butterfat disposed of each month from a producer milk plant shall be classified:

(a) As Class II milk if transferred to a producer milk plant of another handler: *Provided*, That the cream so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee handler after the allocation of receipts from plants subject to regulation under other Federal orders, pursuant to subparagraph (8) of § 1004.47 (b) and (c) and any additional amounts of cream shall be classified as Class I milk; (b) as Class II milk if transferred to a producer-handler; and (c) as Class II milk if transferred to a nonproducer milk plant.

§ 1004.46 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and

other obvious errors the reports of each handler for each producer milk plant submitted pursuant to § 1004.30 and compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk in each producer milk plant of such handler: *Provided*, That if any of the water contained in the milk or skim milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of such product shall be considered to be an amount equivalent to the nonfat milk solids therein plus all the water originally associated with such solids.

§ 1004.47 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1004.46 the market administrator shall determine the classification of producer milk at each producer milk plant as follows:

(a) Subtract from the total pounds of skim milk in Class I milk the pounds of skim milk in receipts of other source milk from dairy farmers who are producers in a pool bulk tank unit as defined pursuant to Part 1002 (New York-New Jersey) and/or the pounds of skim milk which are priced and pooled under any Federal order with a marketwide pool in an amount not to exceed the pounds of skim milk disposed of as Class I milk (Class I-A and skim milk subject to the fluid skim differential in Part 1002) in the marketing area of another Federal order, if the other Federal order in which Class I sales are made, provides for the offsetting of such Class I sales by the purchase of the equivalent amounts of Class I products;

(b) Skim milk remaining after the computation of paragraph (a) of this section shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk, the pounds of skim milk in producer milk classified pursuant to § 1004.41 (b) (7);

(2) Subtract from the total pounds of skim milk in Class I milk, the pounds of skim milk in receipts of certified milk in packaged form;

(3) Subtract from the remaining pounds of skim milk in Class I milk, any remaining pounds of skim milk in other source milk in the form of fluid milk products received during the month in consumer-type packages from a fully regulated plant under another Federal order if classified and priced as Class I milk under such order, or subject to such classification and pricing or the equivalent thereof if assigned to Class I milk under this order;

(4) Subtract from the remaining pounds of skim milk in each class, in sequence, beginning with Class II milk the total pounds of skim milk received in the form of a fluid milk product in receipts from a producer-handler as defined in any Federal order;

(5) Subtract from the remaining pounds of skim milk in each class, in sequence, beginning with Class II milk, the pounds of skim milk in receipts of other source milk;

(i) In the form of cream containing 18 percent or more butterfat;

(ii) In the form of condensed skim milk or nonfat dry milk utilized in a reconstituted or fortified product; and

(iii) In other Class II products which are reprocessed or converted to another product during the month;

(6) Subtract from the remaining pounds of skim milk in each class, in sequence, beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products at:

(i) Any producer milk plant pursuant to § 1004.8(b) from a nonproducer milk plant not regulated under any Federal order;

(ii) Any producer milk plant pursuant to § 1004.8(a) from any nonproducer milk plant which is not regulated under any other Federal milk order if the operators of both plants have claimed in writing Class II utilization at or before the time handler reports are due pursuant to § 1004.30.

(7) Subtract from the remaining pounds of skim milk in each class, the pounds of skim milk in other source milk received in the form of a fluid milk product which is priced under another Federal order and not allocated pursuant to paragraph (a) of this section to the extent such receipts are not offset by transfers of skim milk to the same other Federal order plants, as follows:

(i) In sequence, beginning with Class II milk, if received at a producer milk plant defined in § 1004.8(b) in bulk, or in consumer-type packages but not allocated to Class I milk in subparagraph (3) of this paragraph;

(ii) Pro rata from each class, if received at a producer milk plant defined in § 1004.8(a) in bulk: *Provided*, That the quantity assigned under this subdivision shall not exceed the quantity classified and priced as Class I milk under the other order or subject to such classification and pricing or the equivalent thereof if assigned to Class I milk under this order; and

(iii) In sequence, beginning with Class II milk, if received at a producer milk plant defined in § 1004.8(a) in consumer-type packages or in bulk but not allocated to Class I milk in subparagraph (3) of this paragraph or subdivision (ii) of this subparagraph;

(8) Subtract from the remaining pounds of skim milk in each class, in sequence, beginning with Class II milk, the pounds of skim milk contained in inventory of fluid cream and fluid milk products on hand at the beginning of the month;

(9) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk in receipts from other producer milk plants and assigned to such class pursuant to §§ 1004.44(a) and 1004.45(a): *Provided*, That if the pounds of skim milk of such receipts to be subtracted from Class II milk are greater than the remaining pounds of skim milk in such class, the balance shall be subtracted from the remaining pounds of skim milk in Class I milk;

(10) Add to the remaining pounds of skim milk in Class II milk, the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) If the remaining pounds of skim milk in both classes exceed the pounds

of skim milk in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II milk. Any amount so subtracted shall be known as "overage";

(c) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraphs (a) and (b) of this section; and

(d) Add the pounds of skim milk and the pounds of butterfat allocated to producer milk in each class, pursuant to paragraphs (b) and (c) of this section, and determine the weighted average butterfat content of each class.

MINIMUM PRICES

§ 1004.50 Class prices.

Subject to the provisions of § 1004.51 and § 1004.52 each handler shall pay, at the time and in the manner set forth in § 1004.80 for each hundredweight of milk containing 3.5 percent of butterfat received at his producer milk plant(s) during the month from producers or a cooperative association, not less than the following prices:

(a) *Class I milk.* For each month in each calendar quarter through June 1965, the price per hundredweight of Class I milk shall be the price computed for such quarter pursuant to subparagraphs (1) through (5) of this paragraph:

(1) Compute the indexes set forth in subdivisions (i) through (v) of this subparagraph for the second, third and fourth months preceding the first month of the pricing quarter and divide the sum of these indexes by 15. The result shall be the formula index:

(i) Compute an index of wholesale commodity prices, using a 1957-1958 base period by dividing by 0.99614, the average of the four latest weekly index figures (those available on the 15th day of the following month) of wholesale commodity prices as reported on a 1957-1959 base by the Bureau of Labor Statistics, United States Department of Labor;

(ii) Compute an index of prices paid by Pennsylvania farmers per hundredweight for 20 percent protein mixed dairy feed, using a 1957-58 base period, by dividing by 0.03896 the monthly price for such feed published by the Pennsylvania Federal-State Crop Reporting Service;

(iii) Compute an index of prices received by Pennsylvania farmers for farm products except dairy, using a 1957-58 base period, by dividing by 2.103 the monthly index published by the Pennsylvania Federal-State Crop Reporting Service;

(iv) Compute an index of prices for milk for manufacturing purposes, f.o.b. plant United States, as reported by the Department of Agriculture, using a 1961-62 base period, by dividing by .030707 the monthly average prices determined pursuant to paragraph (b) (1) of this section, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for such month:

Jan	1.023	July	.988
Feb	1.014	Aug	.997
Mar	1.006	Sept	1.000
Apr	.980	Oct	1.004
May	.976	Nov	1.014
June	.984	Dec	1.014

(v) Compute an index of average daily pounds of Class I milk disposition using a 1957-1958 base period, by dividing by 29,476 the daily average for the month of pounds of Class I milk disposition by producer milk plants fully regulated as a result of their sales in the marketing area other than in the State of New Jersey and excluding Class I milk disposition (on route or otherwise) outside the marketing area by any handler whose route disposition in the marketing area, exclusive of New Jersey, is less than 5.0 percent of his total route disposition, and excluding any duplication because of disposition between plants, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for the month:

Jan	1.009	July	0.946
Feb	1.023	Aug	.949
Mar	1.011	Sept	1.020
Apr	1.025	Oct	1.046
May	1.010	Nov	1.005
June	.966	Dec	.990

(2) Subject to the conditions set forth in subparagraphs (3), (4), and (5) of this paragraph the Class I price shall be that price indicated for the pricing quarter in the following Class I price schedule in the line corresponding to the bracket in which the formula index computed pursuant to subparagraph (1) falls, or if such index value is not within a bracket, the price for the calendar quarter shall be determined by the adjacent index bracket which is the same as or nearest to the bracket equivalent to the price in the previous quarter;

CLASS I PRICE SCHEDULE
(PRICE PER HUNDREDWEIGHT)

Formula index	1st quarter (Jan., Feb., Mar.)	2d quarter (Apr., May, June)	3d quarter (July, Aug., Sept.)	4th quarter (Oct., Nov., Dec.)
At least but less than—				
80.0-82.0	4.45	4.05	4.45	4.85
83.8-85.8	4.65	4.25	4.65	5.05
87.6-89.6	4.85	4.45	4.85	5.25
91.4-93.4	5.05	4.65	5.05	5.45
95.2-97.2	5.25	4.85	5.25	5.65
99.0-101.0	5.45	5.05	5.45	5.85
102.8-104.8	5.65	5.25	5.65	6.05
106.6-108.6	5.85	5.45	5.85	6.25
110.4-112.4	6.05	5.65	6.05	6.45
114.2-116.2	6.25	5.85	6.25	6.65
118.0-120.0	6.45	6.05	6.45	6.85

¹ If the formula index is more than 120.0 or less than 80.0 this table shall be extended at the same rate as the increase or decrease in the preceding bracket.

(3) If the annual level of the price for any calendar quarter (the price indicated for the first and third quarters for the bracket in which the formula index computed pursuant to subparagraph (1) falls) is greater than \$2.60 over the simple average of prices of selected Midwestern condensaries as reported by the Department of Agriculture for the 12-month period ending with the second month preceding the quarter for milk of 3.5 percent butterfat, the Class I price for such quarter shall be adjusted downward (in multiples of 20 cents) to a price so adjusted which will be within such \$2.60 variance;

(4) For each month of any calendar quarter the Class I price shall be 20 cents more per hundredweight than the price

prescribed in subparagraph (2) of this paragraph, adjusted pursuant to subparagraph (3) of this paragraph, if receipts of milk from producers at producer milk plants fully regulated as a result of their sales in the marketing area other than in the State of New Jersey during the 12-month period ending with the second preceding month are less than 129 percent of total Class I disposition by such plants in the same period (excluding any duplication because of disposition between plants), and shall be an additional 20 cents more if the percentage of such receipts to such disposition is less than 126: *Provided*, That the price adjustment pursuant to this subparagraph shall not exceed an amount which will result in a Class I price equal to the Class I price for the same quarter of the preceding year plus 80 cents; and

(5) For each month of any calendar quarter the Class I price shall be 20 cents less per hundredweight than the price prescribed in subparagraph (2) of this paragraph, adjusted pursuant to subparagraph (3) of this paragraph, if receipts of milk from producers at producer milk plants fully regulated as a result of their sales in the marketing area other than in the State of New Jersey during the 12-month period ending with the second preceding month are more than 139 percent of total Class I disposition by such plants in the same period (excluding any duplication because of disposition between plants), and shall be an additional 20 cents less if the percentage of such receipts to such disposition is more than 142: *Provided*, That the price adjustment pursuant to this subparagraph shall not exceed an amount which will result in a Class I price equal to the Class I price for the same quarter of the preceding year less 80 cents.

(b) *Class II milk.* The price per hundredweight of Class II milk shall be determined for each month as follows:

(1) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported on a preliminary basis by the Department of Agriculture for the month, by subtracting for each one-tenth of one percent of average butterfat content above 3.5 percent, or adding for each one-tenth of one percent of average butterfat content below 3.5 percent an amount per hundredweight which shall be calculated by the market administrator by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the Department of Agriculture; and

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month:	Amount (cents)	Month:	Amount (cents)
Jan	+16	July	+16
Feb	+15	Aug	+23
Mar	+08	Sept	+19
Apr	+04	Oct	+19
May	+01	Nov	+19
June	+02	Dec	+19

§ 1004.51 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices for the month calculated pursuant to § 1004.50 shall be increased or decreased, respectively, for each one-tenth of one percent variation in butterfat content by the appropriate rate, rounded in each case to the nearest one-tenth cent determined as follows:

(a) *Class I milk.* Divide by 35 an amount calculated as follows: Add all market quotations (using the midpoint of any weekly range as one quotation) of prices per 40-quart can of fresh sweet cream of bottling quality of 40 percent butterfat content, not including prices for cream carrying special municipal approvals, reported at Philadelphia for each week ending within the month by the Department of Agriculture, divide by the number of quotations, subtract \$2.00, divide by 9.7143: *Provided*, That such butterfat differential shall not be less than that provided pursuant to paragraph (b) of this section;

(b) *Class II milk.* Multiply by 0.120 the simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the Department of Agriculture for Grade A (92-score) butter in the New York City market.

§ 1004.52 Location differentials to handlers.

(a) Subject to the conditions of paragraph (b) of this section and the proviso of § 1004.13(b), for that milk received from producers at a producer milk plant located 45 miles or more from the nearest of the City Halls in Philadelphia, Pennsylvania; Trenton or Atlantic City, New Jersey; by shortest highway distance as determined by the market administrator, and classified as Class I or Class II milk, respectively, Class I and Class II prices shall be reduced at the rate set forth in the following schedule according to the location of the producer milk plant where such milk was received from producers;

(1) Class I milk.

Distance of plant from nearest City Hall:	Rate per hundredweight (cents)
45 miles.....	23.0
Each additional 10 miles or fraction thereof an additional.....	1.5

(2) Class II milk.

Distance of plant from nearest City Hall:	Rate per hundredweight (cents)
45 to 70 miles.....	5.0
Each additional 70 miles or fraction thereof an additional.....	1.0

(b) In the case of producer milk plants operated by the same handler as part of a system, the amount of Class I and Class II milk to which the adjustments set forth in paragraph (a) of this section shall apply shall be determined as follows:

(1) Increase the Class I utilization at the producer milk plant(s) specified in § 1004.8(a), operated by such handler and at which no location adjustment ap-

plies, by 5 percent or by an amount which is not in excess of the Class II utilization at such plant(s), whichever is less, and deduct the amount of any such increase from the Class II utilization at such plant(s);

(2) Add to the adjusted Class I and Class II utilization computed pursuant to subparagraph (1) of this paragraph the Class I and Class II utilization, respectively at other producer milk plants in the system;

(3) Assign the Class I utilization computed pursuant to subparagraph (2) of this paragraph first to receipts of producer milk at producer milk plants operated by such handler and at which no location adjustments apply and any remaining Class I utilization shall be assigned to receipts of producer milk at the remaining plant(s) in the system to the extent that milk is moved from such plant(s) in the form of fluid milk products, in sequence, beginning with the plant at which the lowest location adjustment rate applies; and

(4) Receipts from producers which are not assigned to Class I utilization pursuant to subparagraph (3) of this paragraph shall be assigned to Class II milk.

§ 1004.53 Equivalent prices or indexes.

If for any reason a price or index specified by this part for use in computing class prices or other purposes is not reported or published in the manner described in this part, the market administrator shall use a price or index determined by the Secretary to be equivalent or comparable with the factor which is specified.

APPLICATION OF PROVISIONS

§ 1004.60 Producer-handler.

Sections 1004.40 through 1004.47, 1004.50 through 1004.53, 1004.70 and 1004.71, and 1004.80 through 1004.84 shall not apply to a producer-handler.

§ 1004.61 Plants subject to other Federal orders.

(a) Any plant qualified to be both a producer milk plant pursuant to § 1004.8 (a) and a regulated plant under the provisions of any other Federal order shall be fully subject to the provisions of this order during any month in which it disposes of in this marketing area on routes and to other producer milk plants a greater volume of its Class I milk (as defined in this part) than the volume of Class I milk (as defined in such other Federal milk order) disposed of as route disposition in such other marketing area and to regulated plants under the other Federal milk order, unless, notwithstanding that it would be regulated under this part it is nevertheless regulated under such other order.

(b) Any plant qualified to be both a producer milk plant pursuant to § 1004.8 (b) and a regulated plant under the provisions of any other Federal order shall be fully subject to the provisions of this order during any month in which it disposes of a greater volume of its Class I milk (as defined in this part) to producer milk plants under this order than the volume of Class I milk (as defined in such other Federal order) disposed of to plants at which milk is priced and pooled

under such other order unless it would be a regulated plant by virtue of route distribution under such other order or, notwithstanding that it would be regulated under this part, it is nevertheless regulated under such other order.

(c) Any producer milk plant qualified pursuant to § 1004.8 which is a fully regulated plant under another Federal order shall not be subject to the provisions of § 1004.50 through 1004.52, 1004.70 through 1004.71, and 1004.80 through 1004.84 except as such provisions apply to payments to a cooperative association in its capacity as the operator of any plant which is a producer milk plant under this part and an unregulated plant under the other Federal order: *Provided*, That for purposes of determining the status under this part of such plant's otherwise unregulated supply sources, the assignment under such other order of (1) producer receipts, (2) receipts from other regulated plants, and (3) other source receipts on which any compensatory payment was applicable shall be recognized by equivalent assignment under this order prior to the application of § 1004.47 with respect to other receipts at such plant.

(d) In the case of the New York-New Jersey order, equivalent assignment under this part shall be as follows:

New York-New Jersey Order:	Delaware Valley Order (Class)
Class I-A or I-B.....	I
Class II.....	II
Class III.....	II
Skim milk subject to the fluid skim differential.....	I

DETERMINATION OF UNIFORM PRICES

§ 1004.70 Net obligation of handlers.

The net obligation of each handler for producer milk received at each of his producer milk plants each month shall be the sum of money computed by the market administrator as follows:

(a) Multiply the total hundredweight of such milk in each class by the applicable class price;

(b) Add together the resulting amount;

(c) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 1004.47 (b) (11) and (c) by the applicable class price;

(d) Add or subtract as the case may be the amount necessary to correct errors discovered by the market administrator in the verification of such handler's receipts and utilization of milk for the previous month(s); and

(e) Add the amount computed by multiplying the difference between the Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of producer milk classified in Class II during the preceding month exclusive of actual plant shrinkage of producer milk pursuant to § 1004.41 (b) (7), or the hundredweight of milk subtracted from Class I pursuant to § 1004.74 (b) (8) and the corresponding step of (c), which ever is less (except that for the first month of the effective date of this order a credit shall be allowed at each producer milk plant of those handlers regulated by the Philadelphia order the pre-

vious month in an amount computed by multiplying the difference between the Class I milk and the Class II milk prices of the Philadelphia order for such preceding month by the hundredweight of skim milk and butterfat contained in opening inventory of fluid milk products).

§ 1004.71 Computation of uniform prices for handlers.

The market administrator shall compute each month a uniform price for each handler for producer milk received at his producer milk plants as follows:

(a) Add to the amount computed pursuant to § 1004.70 the total of the location differential deductions applicable pursuant to § 1004.82;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk received by such handler is less or more, respectively, than 3.5 percent an amount computed by multiplying such difference by the butterfat differential to producers computed pursuant to § 1004.81 and multiplying the result by the total hundredweight of producer milk;

(c) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price for such handler for the preceding month; and

(d) Divide the resulting amount by the total hundredweight of producer milk received by such handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 3.5 butterfat content, f.o.b. market.

PAYMENTS

§ 1004.80 Payments to producers.

Each handler shall make payment to each producer for milk received from such producer as follows: *Provided*, That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payment for such milk, the handler shall, if requested in writing by the cooperative association, pay such association an amount equal to the sum of the individual payments otherwise payable to such producers in accordance with this section:

(a) On or before the last day of each month each handler shall make payment for milk received during the first 15 days of such month at not less than such handler's estimate of his uniform price per hundredweight but in no event less than the price per hundredweight for Class II milk for the preceding month;

(b) On or before the 20th day after each month each handler shall make payment for milk received during such month at not less than the uniform price per hundredweight computed for such handler pursuant to § 1004.71, subject to the butterfat differential computed pursuant to § 1004.81, the location differential computed pursuant to § 1004.82 less proper deductions authorized in writing by such producers and less payment made pursuant to paragraph (a) of this section; and

(c) On or before the 20th day of each month each handler shall pay a coopera-

tive association which is a handler, with respect to milk, skim milk and cream received by him from a producer milk plant operated by such cooperative association not less than an amount computed by multiplying the minimum prices in each class subject to butterfat differential computed pursuant to § 1004.51 and the location differential of the buying handler computed pursuant to § 1004.52 by the hundredweight of such milk in each class.

§ 1004.81 Butterfat differential to producers.

The applicable uniform prices to be paid each producer pursuant to § 1004.80 shall be increased or decreased, for each one-tenth of one percent which the average butterfat content of his milk is above or below 3.5 percent, respectively, by the butterfat value computed pursuant to § 1004.51(a) and rounded to the nearest full cent.

§ 1004.82 Location differential to producers.

In making payments to producers pursuant to § 1004.80, the applicable uniform prices to be paid for producer milk received at a producer milk plant located at least 45 miles from the nearest of the City Halls in Philadelphia, Pennsylvania; Atlantic City or Trenton, New Jersey, by shortest highway distance as determined by the market administrator, shall be reduced 23 cents plus one and one-half cent for each additional 10 miles distance or fraction thereof, which such plant is located from the nearest of the City Halls in Philadelphia, Pennsylvania; Atlantic City or Trenton, New Jersey.

§ 1004.83 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, accounts, or verification of weights and butterfat tests of milk or milk products disclosed errors resulting in money due a producer or the market administrator, from such handler, or due such handler from the market administrator, the market administrator shall notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1004.84 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 20th day after the end of the month for such month 2 cents per hundredweight, or such amount not exceeding 2 cents per hundredweight as the Secretary may prescribe, with respect to all receipts of producer milk including such handler's own production.

§ 1004.85 Termination of obligations.

The provisions of the section shall apply to any obligation under this part for the payment of money:

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which

the market administrator received the handler's utilization report on the milk involved in such obligation unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1004.90 Effective time.

The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1004.91.

§ 1004.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provisions of this part whenever he finds this part or any provisions of this part obstructs or does

not tend to effectuate the declared policy of the Act. This part shall terminate, in any event, whenever the provisions of the Act authorizing it cease to be in effect.

§ 1004.92 Continuing obligations.

If upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder, the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1004.93 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such liquidating agent as the Secretary

may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignment or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

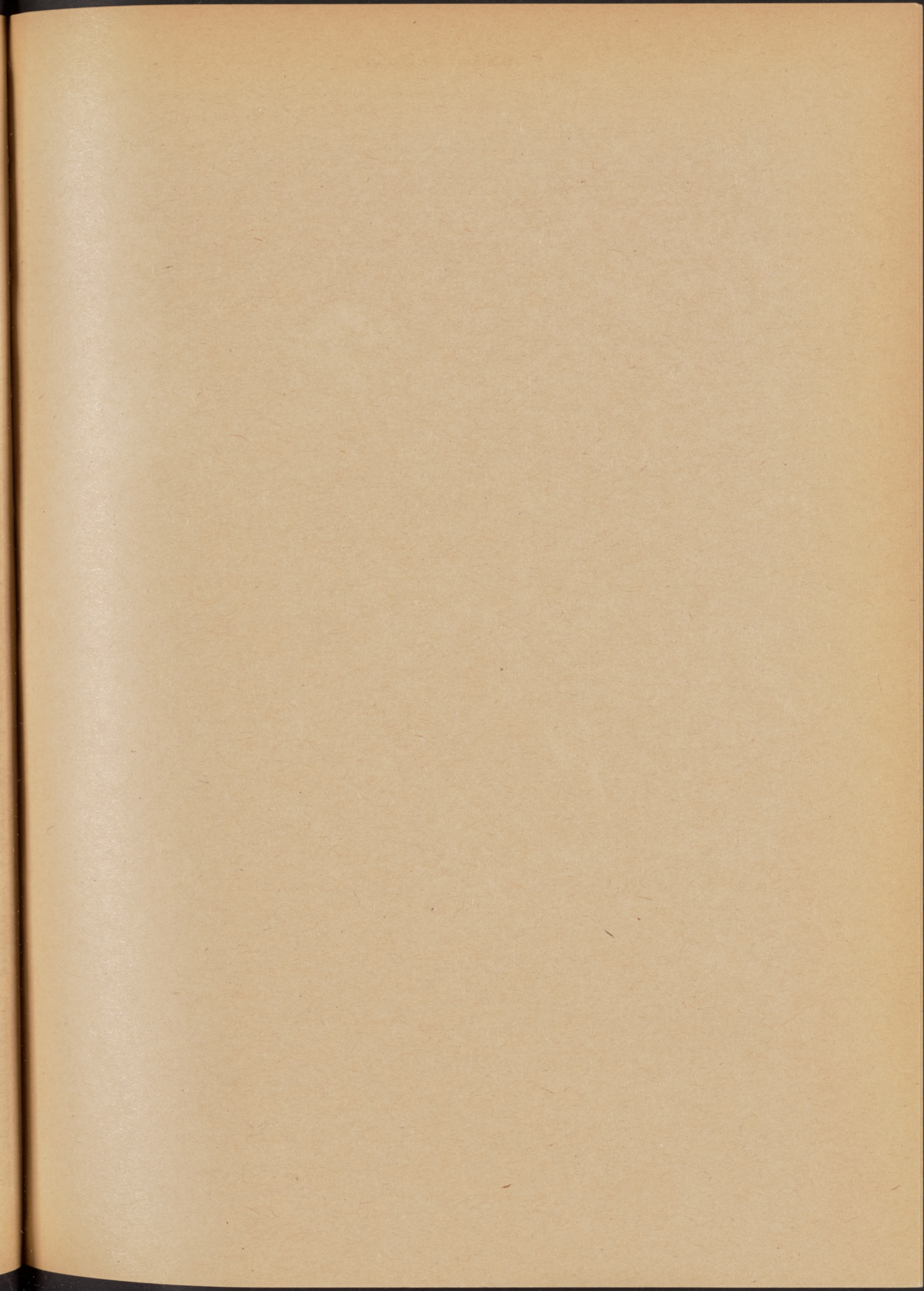
§ 1004.100 Agents.

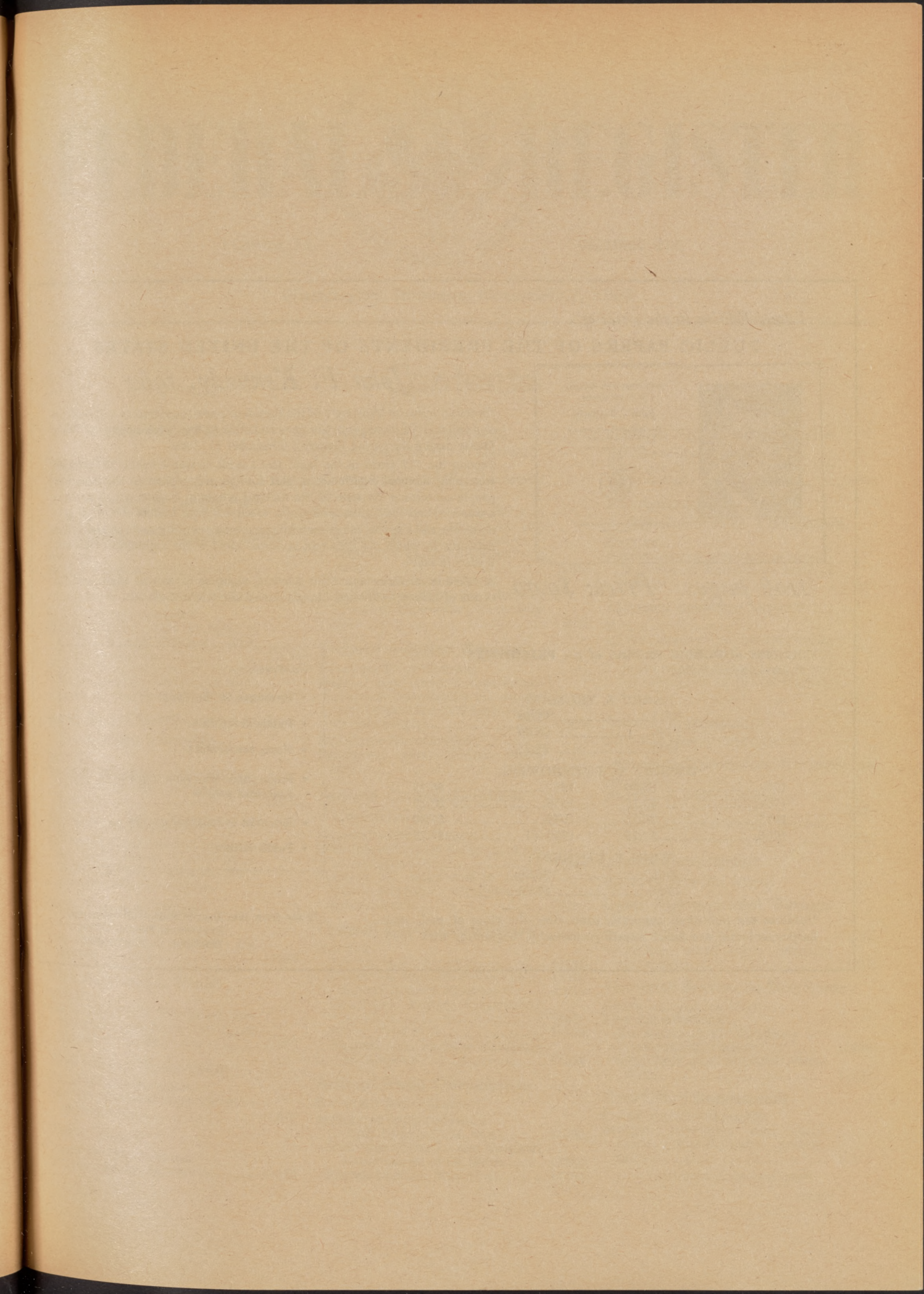
The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 1004.101 Separability of provisions.

If any provision of this part, or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

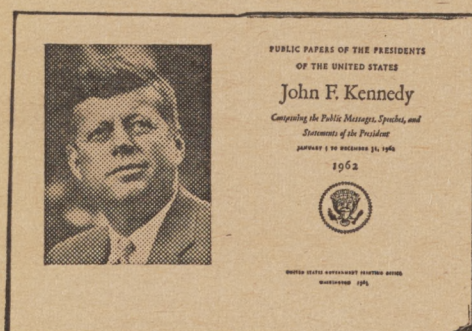
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